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Introduction

Article II of the 1971 Constitution of Egypt and the current Constitutional Declaration stipulates that **Islam is the religion of the State** and that Arabic language is its official language. That the principles of Islamic law are the primary source of legislation is considered the most controversial of the constitutional articles which raises a debate whenever there is a discussion of religious freedom in Egyptian society or of the concerns of Egyptian Christians and their problems to the extent that it made some people limit a major part of the discussion about the 2007 constitutional amendments only to Article II of the Constitution as an extension of a former debate about constitutional amendments.

In this context, we should here mention a number of constants as a form of introduction to the discussion about the debate raised on Article II of the constitution:

* The discussion about Article II of the Constitution has resulted in the emergence of several tendencies that could be political and intellectual scenarios about Article II.

For example:

- The tendency to reject maintaining Article II and demand its elimination entirely from the constitution.
- The opposite tendency to the previous one above which stresses that any infringement of this article means a beginning of real discord in the Egyptian society.
- There is a third tendency that calls for an amendment of the constitutional article through several alternatives that could be specifically considered.
- There is a fourth tendency that affirms that the actual problem does not lie in the constitutional texts themselves, but it is the political usage of such an article and its enforcement.

* The project, the problematic issue of Article II of the Egyptian Constitution, believes in the importance of studying these previous tendencies with an emphasis on the last two in order to reach a disciplined constitutional and political atmosphere.

The aforementioned background means that Article II is problematic to a great extent when a new constitution of Egypt is to be enacted. Such a matter could lead to intense discussions and might lead to a direct clash among the Egyptian political and national forces.

This situation stresses the need for holding calm discussions to realize a number of suitable future scenarios in dealing with the problems of Article II of the constitution. This is the aim of our project which is expected to make proposals in handling such problem during the coming period that will see the holding of parliamentary and presidential elections before drafting of the new Egyptian Constitution.

Whoever follows the religious debate taking place in Egypt would notice that Christian citizens of Egypt do not fear the application of the Islamic *sharī'ah* (Islamic law) as much as they are concerned about the practices of the political Islamic groups that reduced the application of the Islamic *sharī'ah* to just the *hudūd* (penalties in Islam).

Also, whoever follows the sectarian tension issues would easily notice that the issue of changing religions whether from Christianity to Islam or vice versa has been one of the most important reasons for the occurrence of tensions and *fitnah tā'ifīyah* (sectarian strife) over the past ten years. Therefore, some people have linked it to the text of Article II of the Constitution.

The importance of our project which is conducted by the Center for Intercultural Dialogue and Translation (CIDT) with the support of The Middle East Partnership Initiative (MEPI) is that it presents multiple scenarios for a positive handling of Article II of the constitution without demanding its elimination.

Our project aims at drafting more than one scenario for dealing with the text of Article II of the constitution from a legal viewpoint and not a sectarian or religious one and this is through:

1. Determining the origin of the problem of Article II through expanded legal study done by Dr. Nabīl Ahmad Hilmī (Professor of International Law, Former Dean of the Faculty of Law at Al-Zaqāzīq University and former member of the National Council of Human Rights) which includes:
 - The position of religion in successive Egyptian constitutions.
 - The history of adding this article to the constitution and its historical and political context.
 - The beginning of the emergence of the problem of Article II of the Constitution and its handling in the media.

- A comparison between Article II in the Egyptian Constitution and some models of constitutions of some world countries.
2. Analyzing the tendencies of Egyptian Society:
By means of an opinion poll held on a random sample of some 5,000 male and female Egyptian citizens from various governorates to answer several questions related to the Constitution. The poll included the specific question: “Do you agree on canceling or keeping Article II of the Egyptian Constitution?” Then, the answers were analyzed by Dr. Fātimah al-Zanātī (Director of al-Zanātī Office and his Associates) which is specialized in conducting and analyzing public opinion polls.
 3. Monitoring and Analyzing:
The opinions of some 200 men of letters, intellectuals, men of law, Christian and Islamic scholars, media men and members of the People’s Assembly and Shūrā Council on Article II of the Constitution. This analysis was made by Mr. Usāmah Salāmah (a writer interested in the citizenship affairs and the current Editor-in-Chief of *Rose al-Yūsuf Magazine*).
 4. Reaching Conclusions: To determine the proposed scenarios for dealing with the problem of Article II. This being done through holding an expanded conference in which a number of intellectuals and men of law would be invited to discuss the multiple scenarios involving Article II and, as a result, state the most important aspects of the project that could be referred to as a final proposal to each member of the People’s Assembly and Shūrā Council and the elected committee to prepare a new constitution.
 5. Presenting the project results to the committee elected to draft a new constitution: By publishing and distributing a book with the previous discussions to all of the beneficiaries of the project and those interested in the issue of Article II of the constitution.

The importance of this book is that it presents a vision based on the general tendencies of the society whether through public opinion or opinions of intellectuals. This has really helped to present various proposals for drafting Article II of the Egyptian Constitution.

Section I: Project Activities

First: Opinion Poll Concerning the Constitution (2011)

Introduction

What is a constitution?

Persian in origin, the word *dustūr* (constitution) means a basis or rule. It may be simply defined as the legal structure in the state that no other law should violate.

There are various definitions for constitution, but the most comprehensive one may be “the basic branch of the internal public law. A constitution elaborates the main legal rules that outline the identity of the state, indicates the shape of its government and regulates the work of the different authorities as far as their powers and limits are concerned while clearly showing the relationship among these powers, the position of individuals vis-à-vis these powers and the individuals’ rights, freedoms and duties.

1-1 A synopsis on the history of the constitution in Egypt

Throughout its constitutional history, Egypt has experienced several documents. The first was a basic law known as the law of Siyastanamah of 1837. This was practically the first constitution ever known by modern Egypt. It was drafted in the fashion of constitutions that were then prevailing in the United States and Europe.

This constitutional document was followed by the 1882 Constitution which gave rise to a complete, integrated parliamentary system for the first time in Egyptian history. It clearly stated that the selection of members of parliament would be through direct balloting and that a member of parliament would represent Egypt as a whole, not just the constituency that voted for him/her suggesting that it adopted the nation’s sovereignty theory.

The 1882 Constitution was short-lived. It lasted for only a few months due to the colonialist Britain’s attempts to dispose of it in favor of another one, the May 1, 1883 constitution which stripped the nation of any power. It functioned until 1913 when it was replaced by a new basic law named the 1913 Constitution that aimed at squandering the nation’s authority and encumbering its progress.

Right after the British protectorate of Egypt was announced on December 18, 1914 with the outbreak of World War I, the Legislative Assembly was suspended leaving Egypt without any parliamentary or even semi-parliamentary body until the 1923 Constitution was declared.

The 1923 Constitution was one of the best ever known to Egypt, whether in the way public powers were organized or in the way rights, political as well as personal freedoms, of Egyptians were acknowledged. It was the fruition of the Egyptian people's struggle and persistence to enjoy sound political and constitutional practices.

As a result of the 1919 revolution, the Egyptian people gained their independence and sovereignty with the February 28, 1922 Unilateral Declaration of Egyptian Independence. Through this declaration, the British government unilaterally ended its protectorate over Egypt and granted it nominal independence.

Accordingly, this step required a constitution to regulate the rules of power in Egypt on democratic basis.

The government formed a 30-member committee comprised of elite men of law, leaders of the Constitutional Liberals Party and some public figures. The "Committee of 30" in turn set up an 18-member subcommittee and entrusted it with laying general principles for a constitution.

After the Committee of 30 finalized a draft constitution, it referred this draft to the justice ministry's consultative committee that undertook the final legal drafting of this paper. On April 19, 1923, Royal Decree 42 was issued to put place a constitutional system for the Egyptian State.

However, another Royal Decree was issued in 1930 to end the 1923 Constitution. The 1930 Constitution, prepared by the government of Ismā'īl Sidqī, aimed at giving more powers to the king at the expense of parliament. The people denounced the step and staged mass demonstrations that forced the king to re-activate the 1923 Constitution on December 12, 1935.

After the 1952 revolution, the 1923 Constitution was terminated. On December 10, 1952, the Commander-in-Chief of the Armed Forces, in his capacity as the leader of the Egyptian Revolution, issued a declaration that dropped the 1923 Constitution and called for the formation of a committee to draw up a new draft constitution “to be approved by the people”.

Indeed, a decree was issued on January 13, 1952 calling for a committee to be formed to forge a draft constitution that would follow the objectives of the July revolution. After this committee drew up this draft, the government felt that it did not need to fully meet the goals for which the revolution was launched.

Late president Jamāl ‘Abd al-Nāsir finally ordered his technical office to prepare a parallel constitutional study and a draft constitution that would take into account the characteristics of Egyptian society.

On January 15, 1956, the draft constitution was endorsed in its final form and was finally proclaimed by ‘Abd al-Nāsir on January 16, 1956, but it became effective on June 23, 1956 after the people voted in favor through a public referendum. The 1956 Constitution ended on February 21, 1958 when the United Arab Republic, a union between Egypt and Syria, was established.

The 1958 constitution was brief, consisting of only 73 articles. It was a summary of the 1956 constitution with articles “copied and pasted” from it except for some articles that were required for the fledgling state, the UAR, and the transitional period Egypt was experiencing. As the Egyptian-Syrian unity represented in the UAR came to an end on September 22, 1961, an interim constitution was issued in 1964.

2–1 The 1971 Constitution

The 1971 Constitution was the final form of the interim Constitution of 1964. The *Majlis al-Ummah* (the name of the Egyptian Parliament then), which started its work in March 1964, was entrusted with drafting a permanent constitution for the country and then offer it for a referendum.

The *Majlis al-Ummah* established a preparatory committee in June 1966 and finalized a draft constitution in March 1967, but Egypt’s defeat in the 1967 War precluded the scheme. On

March 30, 1968, the president of the republic offered the people a program of action called the “March 30 Statement” which contained an analysis of the causes of the 1967 defeat and a plan of action for the future. It also stressed the need to finalize steps for a draft permanent constitution for the state, a task that was given to the National Conference of the then-ruling Arab Socialist Union instead of the *Majlis al-Ummah*.

Succeeding President Anwar al-Sādāt entrusted the People’s Assembly (parliament) to propose a draft constitution. A preparatory committee was formed with 50 members, later increased to 80, as a panel which had the right to seek the help of experts, religious scholars and other groups within the society.

The committee, completing a draft constitution, presented it to the People’s Assembly on July 22, 1971, which in turn approved the basic principles contained in that draft. On September 11, 1971, the draft, along with its declaration document, was offered to the people for a referendum. The people voted in favor of the draft by a great majority and it became effective as of that day.

Some amendments were introduced to that constitution, the first being in 1980 and later on in 2005. Perhaps the most important among those amendments was Article 76 in which the selection of the president of the republic would be through direct elections.

Later in 2007, it saw other amendments.

After the success of the January 25 Revolution and the triumph of the Egyptian people’s will, the ruling Supreme Council of the Armed Forces (SCAF) that has run Egypt after the president was deposed to set up a committee to introduce some constitutional amendments that were presented for a public referendum on March 19, 2011. The people voted in favor of the amendments, under judicial supervision, to the 1971 Constitution. Later, the military council issued on March 30, 2011 a Constitutional Declaration composed of 63 items and included the amendments approved in the March 19 referendum.

The Constitutional Declaration will remain in force until after the People’s Assembly and Shūrā Council elections scheduled to be held in November 2011 when a constitutional committee will be formed to draft a new constitution. Recently, there have been many debates

and arguments concerning the new constitution and aspirations. The most debatable perhaps has been Article II.

3-1 Article II of the Egyptian Constitution

Article II of the Egyptian Constitution has fueled wide-scale controversy in Egyptian society during the past few months. Some voices have called for amending the drafting of this article while others have called for its abolition in the first place while still a third camp believes that the inflammatory article should not be dealt with by abolition or even amendment. The controversy over this particular article has even outstripped the one over the number of constitutional articles put forward in the referendum on March 19.

Article II of the Egyptian Constitution reads that “Islam is the religion of the state, Arabic is its official language and the principles of the Islamic *sharī’ah* are **the** main source of legislation.”

With the success of the blessed revolution in Egypt and the suspension of the 1971 Constitution, some demands to have this article abolished have begun to surface. The article was one of those amended in 1980.

The People’s Assembly, on April 30, 1980, debated and approved the texts of the required constitutional amendments. The parliament called for a referendum on the amendments on May 22, 1980. Following approval by the people, the amendments were issued by the president of the republic and became effective as of the date the referendum results were announced. Before the amendment, Article II read that “Islam is the religion of the state, Arabic its official language and the principles of the Islamic *sharī’ah* are **a** main source of legislation.”

So far, the controversy over Article II of the Egyptian Constitution is still growing as some believe that it is doing away with the principles of citizenship and accordingly it should be cancelled or amended.

The Center for Intercultural Dialogue and Translation (CIDT) embarked on an opinion poll to detect citizens awareness concerning the constitution and how they specially viewed Article II.

1-4 The objectives of the survey

This study aims to explore citizen opinions concerning the constitution and whether there are articles, particularly Article II, that might need to be amended and it also attempts to reach a formula to be suggested by different groups within the society.

The set objectives are:

- Determining the awareness of the people concerning the constitution and its different articles and items.
- Attempting to assess how far citizens participated in the recent referendum or any other previous elections.
- Learning citizens' opinions regarding whether Article II of the Constitution should be abolished or kept intact and the required amendments.
- Exploring other articles citizens may wish to have changed.

1-5 Order of the Report:

This report illustrates the results of the opinion poll on the Constitution in five chapters. After this chapter, there will be an explanation of the methodology of the study and characteristics of the samples in the second chapter. The third chapter will deal with the awareness of the respondents concerning the Constitution and its different articles and items. The fourth chapter will deal with the respondents' opinions about Article II and whether it should be abolished or changed. The fifth and last chapter is devoted to the conclusion and recommendations regarding the study.

The survey methodology and characteristics of the sample

This chapter reviews the modus operandi employed in this survey and the techniques used to select the sample of study as well as families and respondents surveyed. CIDT launched an initiative to get first-hand opinions by citizens regarding the constitution and particularly the controversial Article II. The survey, conducted by al-Zanātī Office, was originally designed to obtain information about Egyptian street-awareness of the constitution and political participation as well as that of Article II.

2-1 Methodology of the Survey:

The study relied on the quantitative approach to collect data by designing a questionnaire and selecting a sample that is representative of all Egyptian governorates. The study was carried out over several stages for four months.

The first stage covered preparatory activities – designing and selecting the sample, laying a questionnaire and embarking on a test study. The second stage included the training of all data collectors interviewing families and respondents. The third one focused on all data processing activities (revision, symbolizing, entry, verification of data and assuring data conciseness). The fourth and last stage dealt with analysis of the data and preparation of reports.

The following is a detailed explanation of all activities within the survey:

*** The designing and selection of the sample:**

The size of the target sample was set at nearly 5,000 individuals, 18 years old and more, which required a sampling of 5,000 families. The age of 18 years was set because it is the age at which an individual may cast his/her vote in the elections. Due to the high costs of taking a sample for any study, it turned out that reliance on a national sample as a framework for taking a sample for this study would save a lot of time and money. Accordingly, the sample for the health-demographic survey of 2008 was sought as a sample for this study, being a recent one at the national level and representative of all governorates of the country. It also relied on the latest census of Egypt's population.

Taking into consideration an average of 10% non-response, the selected sample was identified to cover 5,500 families.

A multi-stage sampling was taken as:

First stage: Selection of Governorates

The sample targeted the random selection of half of the governorates to conduct the studies there after excluding the borders of ones partly due to their smallness as they represent only 1% of the population and partly due to the high costs of the data collection. The governorates of the Arab Republic of Egypt were divided into three regions: urban governorates, Lower Egyptian governorates and Upper Egyptian governorates.

Selection was made randomly for two of the urban governorates, four Lower Egyptian governorates and four Upper Egyptian governorates respectively, making all selected governorates to conduct the survey as 10 according to Table 1-2:

Second stage: Selection of initial sampling units

Table 1-2: Units of selected sample				
Distribution of selected sampling units according to governorate and size of sample in each governorate – opinion poll survey about constitution 2011.				
Total Sample	Sampling units (village/ locality)			Governorates
	Total	Rural	Urban	
1320	22	-	22	Urban
1200	20	-	20	Cairo
120	2	-	2	Port Said
2040	34	22	12	Lower Egypt
780	13	9	4	Al-Daqahlia
660	11	6	5	Al-Qalyubia
480	8	6	2	Al-Menoufia
120	2	1	1	Al-Ismailia
2160	36	22	14	Upper Egypt
960	16	7	9	Al-Giza
420	7	5	2	Al-Fayoum

600	10	8	2	Sohag
180	3	2	1	Aswan
5520	92	44	48	Total

The number of sampling units (locality/village) was determined according to the size of the sample required, taking into account the selection of 60 families from each locality/village distributed over two sectors (two areas per locality/village). Ninety-two sampling units were selected from the governorates (184 sectors). The selection of the sampling units was made randomly according to the census of population in both urban and rural areas as explained in Table 1-2.

Selection of families:

In the selected sampling units, the study depended on a survey of families available for each of the health-democratic survey sector. A simple random sample (SRS) was selected from each sector composed of 30 families and was placed in a sampling record along with survey maps and models to set the areas of work so that a supervisor may have easy access to a selected family. During the interviews with families, the individuals eligible for one-on-one meetings were determined and each individual was selected by using a table of random selection for interviewing. Eventually, some 5,520 families were selected.

Designing a questionnaire:

The survey questionnaire form, designed by experts from al-Zanāṭī Office, covered all the topics the survey targets in order to get acquainted with opinions of individuals in the society. The form contained two sections in addition to the introduction data.

The first section included the data about all individuals of a family – age, marital status, education and work in addition to the selection of an individual eligible for interview.

The second section contained questions on knowledge about the constitution and its different articles and items, sources of knowledge about the constitution, participation in the latest referendum, information about Article II of the constitution and opinions regarding its cancellation or amendment.

Demonstration on how to conduct the survey:

A demonstration was conducted during the preparatory period of the survey, four days after training on the questionnaire on a limited number of families that are not included into the sample. Participating in the field experiment were some 42 researchers and supervisors who took part in collecting the basic data. The experiment, conducted in Greater Cairo, relied on remarks by researchers and the results of the demonstration in preparing a questionnaire in its final form.

Data collecting activities:

Selection of field researchers: Thirty-four researchers and 10 supervisors were selected to train prior to conducting the survey. They had worked before for al-Zanātī Office on similar studies, particularly in opinion polls. The researchers had attended the training course involving the demonstration, by the end of which some 42 researchers and supervisors were selected to participate in the demonstration.

Training of supervisors and researchers: In order to guarantee that the field researchers fully understood the theme of the study, a training course was held for six days at al-Zanātī Office's training center ahead of the basic stage of data collection. The course included the following:

- A lecture on the objectives of the research and the scope of work.
- Lectures on the art of interviewing and the determined topics of the survey.
- Lectures on how to fill in the forms by use of audio-visual devices.
- Opportunities for role-playing and explaining interviews.

A session was devoted for supervisors during the course which focused specically on the tasks of supervisors.

Data collection: After the end of the basic training, the researchers with utmost efficiency in filling out forms were selected and the less efficient were excluded prior to commencing work on the data collection phase. The work teams were divided into groups of eight. Each team had a supervisor and four researchers (two males and two females) in addition to two field coordinators to orchestrate work of all teams in the Upper and Lower Egyptian governorates.

Field work on the survey started on July 18, 2011. The forms were filled in about 10 days in which 5,179 individuals in the selected governorates were interviewed. After starting with geographically remote governorates, followed by nearer governorates, all teams worked in the governorates of al-Giza, al-Qalyubiya and Cairo by the end of the data collection phase.

While data was being collected, a number of respondents asked about the purpose of this survey and enquired about the constitution during such unstable period. Some harbored fears that the work team might have belonged to one of the new political parties and that it was trying to collect signatures from local residents. The field work teams dealt with these questions wisely with skills acquired from earlier experiences at the al-Zanāī Office.

The data collecting activities:

Office review:

The field work director and his assistant visits the teams in order to follow up on the progress of work and also to bring the completed forms of any locality/village to the office. The office reviewers then check the forms to make sure that coordination was in place, that questions were completely answered and the open questions were marked with codes prior to the data-entry process. The office reviewers, as work commenced, prepared reports about each team, noted the mistakes made and sent remarks to the field teams for future avoidance.

Data entry and re-entry:

The data of the study was computerized using the CSPro, a set of data entry and reviewing programs. Entry began while all data-collection teams were still in the field. Four people entered the data into computers. During the entry process, the data was verified by re-entering 100% of the forms. A program for the coordination and revision of data was specially designed. Later, a final file for the data was prepared for use in analysis.

Data processing and report writing:

As data entry was finalized, the tables necessary for writing reports were prepared. Preparing these tables took about two weeks, after which the survey reports were written, expressing the respondents' trends regarding the constitution and its different articles and items that need to be amended, particularly Article II.

2-2 Survey Coverage

Table 2-2 summarizes the results of the field survey of an opinion poll on the 2011 constitution in accordance with residence. The table specifies that during the period of the field survey, 5,179 households were successfully interviewed out of total 5,520 selected for the survey and that the rate of response was 93.8%. The table shows that the aggregate number of individuals of 18 years and more, qualified for being interviewed is 13,293, of which 5,187 were selected and 5,179 were successfully interviewed at a response rate of 99.8%.

Table 2-2 sample results											
Results of meetings and rate of response of households and individuals of age 18 and more who are qualified for the meeting, according to the residence (city-village), place of residence, survey of opinion poll on 2011 constitution											
	Residence			Urban governorates	Lower Egypt			Upper Egypt			Total
	Urban areas	Rural areas			Urban areas	Rural areas	total	Urban areas	Rural areas	Total	
Total selected living families	2880	2640		1320	720	1320	2040	840	1320	2160	5520
Total interviewed families	2707	2472		1263	672	1241	1913	772	1231	2003	5179
Rate of response	94.0	93.6		95.7	93.3	94.0	93.8	91.9	93.3	92.7	93.8
Total qualified individuals of 18 years and more	6890	6403		3231	1668	3153	4821	1991	3250	5241	13293

Total selected individuals of 18 years and more	2709	2478	1263	672	1241	1913	774	1237	2011	5187
Total interviewed individuals	2707	2472	1263	672	1241	1913	772	1231	2003	5179
Rate of response	99.9	99.8	100.0	100.0	100.0	100.0	99.7	99.5	99.6	99.8

2-3 Characteristics of the Sample

This part shows the most important characteristics of households that were interviewed, then the characteristics of individuals 18 years and older that were also interviewed and covered by the survey.

Household Characteristics:

Table 2-3 shows the proportional distribution of households in terms of volume and number in relation to their place of residence. It also shows that the average volume of the households in Egypt is 4.97 persons. Moreover, the table shows that this volume is higher in rural areas of Egypt than in urban areas and governorates. The average volume of households in the countryside is 5.36 persons as compared to 4.54 persons in urban areas 4.43 persons urban governorates. The rate of families whose number of individuals is eight persons or more is 3% in urban areas and governorates compared to 11% in rural areas. It is also notes that the number of persons in households in rural and urban areas of Upper Egypt is higher than in Lower Egypt and that the rate of families whose number of individuals is eight persons and more is nearly 5% in Lower Egypt governorates compared to 12% in Upper Egypt governorates.

Table 2-3 household composition according to residence											
Relative distribution of households according to the volume of family, residence (urban – rural), survey of opinion poll on 2011 constitution											
		Residence			Lower Egypt			Upper Egypt			

		Urban areas	Rural areas		Urban governorates	Urban areas	Rural areas	total		Urban areas	Rural areas	Total	total
	Household volume												
	1	2.5	1.1		2.9	2.3	1.1	1.5		2.1	1.1	1.4	1.8
	2	8.0	5.1		8.5	8.2	6.2	6.9		7.1	4.0	5.1	6.5
	3	13.0	8.2		14.9	11.6	9.2	10.0		11.2	7.3	8.6	10.5
	4	25.8	18.3		25.0	27.3	21.9	23.7		25.7	15.2	18.8	21.9
	5	26.5	25.0		27.2	28.7	29.5	29.2		23.7	21.1	22.0	25.8
	6	14.3	19.7		12.7	14.5	18.8	17.4		16.6	20.4	19.1	17.1
	7	6.4	12.0		6.2	4.6	7.7	6.7		8.2	15.9	13.2	9.3
	8	1.9	5.8		1.4	1.6	2.4	2.1		3.1	8.8	6.9	4.0
	9+	1.5	4.8		1.2	1.2	3.2	2.6		2.2	6.3	4.9	3.2
	Households number	2707	2472		1263	672	1241	1913		772	1231	2003	5179
	Households average volume	4.54	5.36		4.43	4.50	5.05	4.87		4.75	5.63	5.33	4.97

Table 2-4 displays the educational level of individuals of households according to gender, age and place of residence. It shows that almost 23% of individuals have not gone to school and the rate of persons who hadn't completed their primary education was 19%. Moreover, the number of individuals who received university education was 11%.

Reflecting on educational levels and some details of the backgrounds of the household's individuals, we noticed the gap between males and females in terms of education where the rate of females who have never been to school was almost twice the rate of males.

It was also noted that there has been an improvement in school enrolment over the years where the rate of persons who had never been to school decreased with age. For example, this rate reached almost 65% for individuals ranging in age form 10–14. Similarly, the rate of persons who received a university education and more in the 25-29 age category was nearly 24%. However, it did not surpass 9% for persons 60 years old and more.

It is clear that education levels in urban areas are better than those in rural areas. This was obvious in the rate of persons of university education and more where this rate in urban areas was three times greater than the rate in rural areas. In addition, around 27% of the individuals in rural areas had never been to school, compare with a rate of 18% in urban areas. At the level of Lower Egypt and Upper Egypt governorates, we found a sort of disparity in the educational level as the rate of individuals who had never been to school in Lower Egypt was 20%, compared to 28% in Upper Egypt. Worth noting is that the rural and urban areas in Upper Egypt suffer a gap in educational level, clearly manifested in the rate of individuals with a university education and more, which was 18% in urban areas of Upper Egypt as compared to 3% in rural areas of Upper Egypt. Moreover, the rate of individuals who had never been to school in Upper Egypt’s rural areas was almost twice the rate in Upper Egypt’s urban areas.

<p align="center">Table 2-4 proportional distribution of household individuals 6 years and more according to educational status and background</p> <p align="center">Relative distribution of household individuals 6 years and more according to the highest level of education completed, and according to the background, survey of opinion poll on 2011 Constitution</p>							
background	Never gone to school	Never completed primary school	Completed primary school	Completed preparatory school	Completed secondary school/above medium	University and more	
Gender							
Male	16.3	19.9	13.5	10.9	26.8	12.7	
Female	29.3	18.0	11.4	9.3	22.6	9.4	
Age of household individuals							

	6-9	22.2	77.6	0.1	0.1	0.0	0.0	
	10-14	2.7	47.7	47.2	2.4	0.0	0.0	
	15-19	5.4	5.0	16.8	51.7	21.2	0.0	
	20-24	8.2	5.5	5.6	7.5	53.4	19.8	
	25-29	14.8	7.1	6.1	5.1	42.6	24.2	
	30-34	16.5	7.0	7.2	5.8	43.7	19.7	
	35-39	24.7	6.7	7.1	6.3	38.2	17.0	
	40-44	31.7	7.0	6.0	7.0	33.6	14.7	
	45-49	35.2	8.8	7.2	5.3	29.1	14.4	
	50-54	40.9	11.2	7.8	4.6	20.7	14.6	
	55-59	45.3	10.3	6.9	4.9	17.2	15.4	
	60-64	56.0	10.2	7.0	3.5	13.8	9.4	
	65+	64.9	10.9	5.8	3.4	7.3	7.6	
	Residence							
	Urban areas	17.6	15.9	11.1	10.3	28.3	16.9	
	Rural areas	27.3	22.0	13.9	9.9	21.3	5.6	
	Place of residence							
	Urban governorates	17.5	15.3	11.2	10.5	27.4	18.1	
	Lower Egypt	19.5	19.8	13.6	10.0	27.2	10.0	
	Urban areas	17.4	16.1	11.9	10.6	30.3	13.7	
	Rural areas	20.5	21.6	14.4	9.7	25.7	8.1	
	Upper Egypt	28.0	20.3	12.3	10.0	21.2	8.2	
	Urban areas	17.8	16.6	10.2	9.8	28.2	17.5	
	Rural areas	33.6	22.3	13.4	10.1	17.4	3.3	
	Number	4249	3575	2356	1908	4666	2094	
	Total	22.5	19.0	12.5	10.1	24.8	11.1	

Characteristics of Respondents

Table 2-5 displays the background characteristics of those interviewed according to residence and place of residence. The table shows that the age category of around 25% of the interviewed respondents ranged between 30-39 while only 10% of the respondents were in the age category 18-22. Moreover, 20% of the interviewed respondents were working while 60% of the respondents were not working at the time. The table also shows that the interviewed

respondents who had never been to school are twice the number of interviewed respondents who received a university education or more.

Table 2-5 background characteristics of respondents (qualified for single interview)												
Relative distribution of interviewed individuals of 18 years and more according to residence and background, survey of opinion poll on 2011 Constitution												
Background Characteristics	Residence			Urban Governorates	Lower Egypt			Upper Egypt			Total	
	Urban areas	Rural areas			Urban areas	Rural areas	total	Urban areas	Rural areas	Total	Number	Total
Gender												
Male	49.2	48.7		49.1	49.3	48.8	49.0	49.4	48.7	48.9	2537	49.0
Female	50.8	51.3		50.9	50.7	51.2	51.0	50.6	51.3	51.1	2642	51.0
Age												
18-22	9.9	11.2		9.6	9.2	10.0	9.7	10.9	12.4	11.8	544	10.5
23-29	15.7	18.1		15.1	15.3	18.6	17.5	17.1	17.6	17.4	874	16.9
30-39	23.1	26.0		21.0	24.9	26.1	25.7	25.0	25.8	25.5	1267	24.5
40-49	18.5	18.6		18.8	18.3	18.3	18.3	18.4	19.0	18.8	963	18.6
50-59	15.0	13.1		16.8	13.2	13.5	13.4	13.6	12.7	13.0	730	14.1
60+	17.8	12.9		18.8	19.0	13.5	15.4	15.0	12.4	13.4	801	15.5
Educational status												
Never gone to school	21.7	36.6		23.0	21.0	27.8	25.4	20.2	45.5	35.7	1493	28.8
Never completed primary school	5.4	8.8		4.9	4.9	8.2	7.1	6.7	9.3	8.3	364	7.0
Completed primary school	7.1	8.9		7.1	7.7	9.4	8.8	6.5	8.4	7.6	412	8.0
Completed preparatory school	6.6	6.2		7.9	6.3	5.6	5.9	4.8	6.8	6.0	333	6.4

Completed secondary school/ above medium	37.3	31.1	33.3	41.5	37.0	38.6	40.0	25.2	30.9	1778	34.3
University and more	21.9	8.4	23.7	18.6	11.9	14.3	21.8	4.8	11.3	799	15.4
	.0	.0	.0	.0	.0	.0	.0	.0	.0		
Occupation status											
Currently employed	41.1	40.8	41.3	40.2	42.0	41.3	41.6	39.6	40.3	2121	41.0
Currently Not employed	58.9	59.2	58.7	59.8	58.0	58.7	58.4	60.4	59.7	3058	59.0
Total	2707	2472	1263	672	1241	1913	772	1231	2003	5179	100.0

The same pattern was noted in terms of background characteristics according to educational status. Form 2-1 shows an increase in the number of interviewed respondents who had never been to school in rural areas compared to that in urban areas (37% and 22% respectively). The number of interviewed respondents with university education or higher in urban areas was more than that in rural areas (22% and 8% respectively). The table also indicates that the interviewed respondents in the rural areas of Lower Egypt were more likely to be educated as compared with those interviewed in the rural areas of Upper Egypt (72% and 55% respectively). This was also the case with those who received university education (also 12% and 55 respectively).

Citizens' Opinions Regarding Constitution

This chapter displays data that shows to what extent citizens are aware of the Egyptian constitution and its various articles. The chapter also displays information about the sources of knowledge of the constitution and to what extent citizens took part in the referendum on constitutional amendments as well as their views regarding these amendments, their reasons and the articles that need amending in the constitution. Finally it shows the citizens' point of view regarding what should be given priority: changing the constitution for the People's Assembly elections.

3-1 Knowledge of the Egyptian Constitution

The study “Opinion Poll on the Constitution” collected data from respondents 18 years and older concerning their knowledge of the constitution by asking them whether or not they had heard about constitution. Respondents who knew constitution were asked about the nature of their information. Moreover, they were also asked about the sources of their information. The outcome of these inquiries will be displayed as follows.

Hearing about Constitution and Nature of Information

Table 3-1 displays the proportional distribution of individuals of 18 years and older in terms of how far they had heard about constitution and the nature of their information in accordance with the background characteristics. The table indicates that 76% of respondents had heard about constitution with some differences pertaining to their background characteristics. Regarding the place of residence, the rate of respondents in urban areas who heard about constitution was about 82% compared with 70% in rural areas. As for gender, the rate of male respondents who had heard about constitution was 83% compared with 69% for females. Pertaining to age, the rate of respondents who heard about constitutions in the age category ranging from 30-39 was 82% compared to a rate of 58% in the age category 60 years or older. Regarding religion, the rate of Christian respondents who had knowledge of constitution was greater than that of their Muslim counterparts (85% and 76% respectively). As for education, the rate of respondents who heard about constitution with university education or higher was 98% compared to a rate of 49% of those who had never been to school and had heard about constitution.

1													
2	<p align="center">Table 3-1 knowledge of Egyptian Constitution and nature of information Relative distribution of individuals of 18 years and more according to their hearing about Egyptian Constitution and the nature of their knowledge about in accordance to background characteristics, survey of opinion poll on 2011 constitution</p>												
3													
4													
5		Hearing about constitution	Nature of information about constitution										
6													
7													

8	Background characteristics	Yes I heard about constitution	number	Laws governing the country	System & laws between people & authorities in society	Supreme law in country (father of law)	Law governing presidency / elections	Recent Constitutional amendments	Wrong Conceptions About constitution	Does n't know	number
9											
10											
11	Place of residence										
12	Urban areas	81.6	2707	65.5	4.4	5.2	3.0	4.5	2.7	16.7	2208
13	Rural areas	69.7	2472	62.4	6.8	2.6	6.2	5.2	3.8	18.1	1723
14											
15	Gender										
16	Male	83.1	2537	67.4	6.1	4.4	4.5	4.5	2.7	14.5	2108
17	female	69.0	2642	60.4	4.7	3.6	4.3	5.2	3.8	20.6	1823
18											
19	Age										
20	18-22	79.2	544	69.4	5.3	3.9	4.4	4.4	3.0	13.2	431
21	23-29	78.7	874	66.6	6.3	4.1	4.5	4.4	2.9	16.1	688
22	30-39	81.5	1267	66.0	5.1	3.6	3.4	4.4	3.4	17.1	1033
23	40-49	80.5	963	65.2	6.2	3.1	5.7	5.3	3.5	15.0	775
24	50-59	73.4	730	59.0	4.7	5.8	4.7	6.0	2.6	20.1	536
25	60+	58.4	801	56.0	4.7	4.5	4.1	4.9	3.4	24.1	468
26											
27	Religion										
28	Muslim	75.5	4928	63.7	5.6	3.9	4.5	4.9	3.3	17.6	3719
29	Christian	84.5	251	72.2	2.8	5.7	2.8	3.3	1.9	13.2	212
30											
31	Educational status										
32	Never gone to school	49.1	1493	47.2	3.1	.5	5.6	7.4	5.5	32.6	733
33	Never completed primary school	73.6	364	46.6	4.1	1.9	6.3	6.3	3.4	32.8	268
34	Completed primary school	73.8	412	54.9	3.9	2.6	5.3	7.2	4.9	23.7	304

35	Completed preparatory school	77.8	333	62.2	4.2	3.9	5.4	5.8	3.1	18.9	259
36	Completed secondary school/above medium	89.0	1778	72.4	5.1	2.6	4.3	4.0	2.8	12.8	1583
37	University and more	98.1	799	73.7	9.7	11.5	2.2	2.3	1.0	4.0	784
38											
39	Occupation status										
40	Currently employed	85.2	2121	68.5	6.5	4.3	4.5	4.8	2.4	13.2	1807
41	Currently Not employed	69.5	3058	60.5	4.6	3.8	4.3	4.9	3.9	20.8	2124
42											
43	Total	75.9	5179	64.2	5.4	4.0	4.4	4.8	3.2	17.3	3931
44											

Regarding the nature of information about constitution, 64% of respondents noted that constitution was considered as the law governing the country while some 5% said that it was a system of laws between the people and the authorities in society. Moreover, 5% said all what they knew about constitution was just the recent constitutional amendments, while a rate of 3% of respondents referred incorrectly to conceptions about constitution. Some 17% of respondents did not know the nature of information about constitution. There were also divergences according to background characteristics. The level of those who did not have information about constitution was higher among those living in rural areas, females, older ages, lesser-educated and those who were unemployed. On the contrary, the rate of respondents who said that constitution was the law governing the country was higher among those living in urban areas, males, youth, Christians, better- educated and those who were employed.

Sources of Knowledge about Egyptian Constitution

The respondents were asked about their sources of knowledge concerning the Egyptian Constitution. Table 3-2 displays the proportional distribution of individuals of 18 years and

older who heard about the Constitution according to sources of information as well as their background characteristics. table indicates that 97% of respondents heard about constitution through the TV, 32% from friends/relatives/neighbors, while 17% of respondents said they heard about constitution from newspapers and magazines. Other sources were mentioned by 6% or less of respondents. There were differences according to background characteristics of respondents.

Regarding the place of residence, the rate of respondents in urban areas who heard about constitution through newspapers and magazines was 22% compared to 11% in rural areas. As for gender, the rate of respondents from males who heard about constitution from newspapers and magazines was 19% compared with 14% for females. In terms of age, 10% of respondents who heard about constitution through the internet were in the age category 18-22 compared with 3% only of respondents of 60 years old and older.

Table 3-2 sources of information about Egyptian constitution										
Relative distribution of individuals of 18 years and more who heard about Egyptian constitution according to sources of information and background characteristics, survey of opinion poll on 2011 constitution										
Sources of information										
Background characteristics	TV	radio	Newspapers/magazines	internet	seminars	study	work	Friends/Relatives/neighbors	Specialized books	
Place of residence										
Urban areas	97.1	3.4	21.7	8.7	0.4	4.4	5.8	33.7	3.3	
Rural areas	97.6	3.9	10.6	2.7	0.6	3.4	5.5	30.3	1.3	
Gender										
Male	97.1	3.8	19.1	6.3	0.7	4.0	6.9	34.5	2.8	
female	97.6	3.3	14.3	5.8	0.3	3.8	4.2	29.6	2.1	
Age										
18-22	96.8	3.5	16.9	10.0	0.9	7.7	2.3	35.7	2.6	
23-29	96.4	1.9	14.1	7.7	0.4	5.5	4.4	32.0	3.1	

	30-39	98.2	4.3	15.6	5.4	0.7	3.4	6.7	32.0	2.4	
	40-49	97.4	3.6	19.4	6.5	0.3	3.2	6.8	33.8	1.5	
	50-59	97.6	4.3	19.0	3.9	0.0	2.8	9.7	32.5	2.6	
	60+	97.2	3.8	16.9	3.0	0.6	1.9	1.7	26.9	2.8	
	Religion										
	Muslim	97.3	3.7	16.7	5.9	0.5	4.0	5.7	31.9	2.5	
	Christian	99.1	0.9	19.3	8.5	0.9	3.3	5.2	38.2	0.9	
	Educational status										
	Never gone to school	96.3	2.6	2.5	0.4	0.0	0.1	1.6	25.1	0.3	
	Never completed primary school	98.5	1.1	2.6	0.0	0.4	0.7	2.2	32.1	0.4	
	Completed primary school	98.4	2.6	5.6	0.3	0.3	1.3	2.3	26.3	0.3	
	Completed preparatory school	98.1	2.3	10.4	1.9	0.4	1.2	4.6	33.2	0.8	
	Completed secondary school/above medium	97.7	3.9	18.3	4.2	0.6	2.8	5.7	35.1	2.0	
	University and more	96.6	5.6	38.8	20.5	0.9	12.8	12.1	35.1	7.5	
	Occupation Status										
	Currently Employed	97.3	4.2	20.1	6.9	0.6	3.5	10.6	36.3	3.1	
	Currently Not Employed	97.4	3.1	14.1	5.3	0.4	4.3	1.4	28.8	1.9	
	Total	97.4	3.6	16.8	6.0	0.5	3.9	5.6	32.2	2.4	
	Number	3827	141	662	237	19	155	222	1267	96	
	Main Source of Information	81.7	0.3	3.3	3.9	0.2	2.1	2.0	4.9	1.6	

Regarding religion, Christian respondents stated that their information about constitution came from friends/relatives/neighbors in addition to newspapers and magazines than their Muslim counterparts (38% / 19% respectively compared to 32% / 17% respectively).

As for educational status, as was expected, 39% of respondents who received university education or higher heard about constitution from newspapers and magazines compared to some 3% of respondents who hadn't finished their primary education.

After learning about all sources about where respondents got their information about Egyptian constitution, a question was asked to all respondents as to the main source of information about the constitution. The form 3-5 shows that some 82% of respondents noted that the main source for knowing about constitution was TV while a very low percentage of respondents referred to the internet and newspapers/magazines as well as our study (4%, 3%, and 2% respectively) as the primary sources for learning about constitution.

3-2 Positions regarding participation in the referendum on the recent constitutional amendments:

The respondents covered by the opinion poll on the constitution were asked whether or not they had participated in the referendum on recent constitutional amendments which the Military Council called on 19 March and their reasons for participating or not.

Participation in the Referendum on Recent Constitutional Amendments

Table 3-3 displays the proportional distribution of individuals of 18 years and older according to their participation in the referendum on the constitutional amendments in accordance with the background characteristics. Some 64% of respondents noted that they participated in the referendum on recent constitutional amendments. This rate was higher among males than among females (72% against 54%), among Christians than among Muslims (74% against 63%) and among those employed than among those unemployed (72% compared to 56%). As for educational status, the rate of respondents with a university education and higher were the most participative (77%) while the less participative were respondents who had never been to school (51%). In general, young respondents were the most participative in the referendum on the recent constitutional amendments.

Table 3-3 participation in referendum on recent constitutional amendments																
Relative distribution of individuals of 18 years and more according to their participation in recent constitutional amendments, the reasons for this, and participation in previous referendum or elections according to background characteristics, survey of opinion poll on 2011 Constitution																
		Reasons for participation in referendum														
Participants in referendum																
Background characteristics	Rate	Number	Because there is democracy and impartiality, I'm sure my voice would be heard	For country stability	For not changing constitution (especially second article)	For changing constitution	National duty/vote is a trust/positive	I used my voice to participate/express of opinion	I Went with people / majority said "yes"	To get used to voting	Christians said "no" so I went to say "yes"	Participated for not paying a fine	Because I agree with amendments	Participated in previous referendums / elections	total	
Place of residence																
Urban areas	65.9	2068	20.2	39.5	1.8	7.2	9.2	18.7	5.1	1.8	0.0	0.0	20.2	34.8	1363	
Rural areas	60.3	1516	13.1	44.2	1.4	3.8	8.6	27.9	8.2	0.4	0.3	0.2	13.1	45.9	914	
Gender																
Male	71.5	1949	17.5	41.9	1.5	5.3	8.6	24.0	4.6	1.4	0.1	0.1	17.5	51.0	1394	
female	54.0	1635	17.2	40.5	1.9	6.7	9.6	19.8	9.1	1.0	0.1	0.1	17.2	29.6	883	
Age																
18-22	58.8	391	19.1	37.4	1.7	6.1	6.5	23.9	7.4	1.7	0.0	0.0	19.1	30.0	230	
23-29	57.7	624	19.4	35.8	2.8	5.6	11.7	25.3	5.8	1.9	0.0	0.0	19.4	34.4	360	
30-39	62.9	946	16.6	43.9	1.7	5.4	9.6	22.2	6.4	0.7	0.2	0.0	16.6	39.6	595	

40-49	70.9	708	17.7	41.4	2.0	6.0	8.0	22.1	5.6	1.2	0.4	0.2	17.7	46.6	50.2
50-59	67.8	497	18.1	42.1	0.9	7.4	7.4	20.5	6.2	1.5	0.0	0.3	18.1	45.9	33.7
60+	60.5	418	13.0	45.8	0.4	4.7	10.3	20.6	7.5	0.8	0.0	0.0	13.0	40.7	25.3
Religion															
Muslim	62.9	3384	17.6	43.0	1.8	4.4	9.1	21.9	6.6	1.3	0.1	0.0	17.6	39.8	21.29
Christian	74.0	200	14.2	18.2	0.0	27.0	8.1	29.1	2.7	0.7	0.0	1.4	14.2	45.0	14.8
Educational status															
Never gone to school	51.3	602	12.3	50.8	0.3	4.2	5.2	13.9	15.2	1.0	0.0	0.3	12.3	32.4	30.9
Never completed primary school	60.7	242	14.3	49.0	0.7	5.4	4.1	13.6	15.0	2.0	0.0	0.7	14.3	41.8	91
Completed primary school	54.4	261	10.6	54.9	0.0	4.9	6.3	19.0	11.3	0.0	0.7	0.0	10.6	39.3	19.8
Completed preparatory school	58.6	232	15.4	46.3	0.0	5.1	7.4	16.2	8.1	1.5	0.0	0.0	15.4	36.3	13.6
Completed secondary school/above medium	64.4	1477	17.8	40.0	2.7	4.7	8.0	25.0	4.5	0.8	0.2	0.0	17.8	43.5	86.8
University and more	76.9	770	22.3	32.4	1.7	9.0	14.9	27.0	0.8	2.0	0.0	0.0	22.3	48.2	59.2
Occupation Status															
Currently Employed	72.1	1678	18.3	41.7	1.6	6.2	8.8	23.1	4.4	1.2	0.2	0.1	18.3	50.2	12.10

Currently Not Employed	56.0	1906	16.3	41.0	1.8	5.4	9.2	21.6	8.5	1.2	0.1	0.1	16.3	33.1	1067
Total	63.5	2277	17.4	41.4	1.7	5.8	9.0	22.4	6.3	1.2	0.1	0.1	17.4	40.1	2277
Number	--	--	396	942	38	133	205	510	144	28	3	2	396	--	--

Regarding the reasons for participating in the referendum, 41% said that they participated for the country's stability and 22% said they did so because they had the right to participate/express their opinion. A rate of 17% referred to the existence of democracy and impartiality. In addition, 6% noted that they participated in order to change the constitution while 2% said they participated in order to not change the constitution (especially Article II). There were variations in relation to background characteristics. Respondents from rural areas, older ages, Muslims and lesser-educated were among those who participated for the country's stability while respondents in rural areas, males, youth, Christians and better-educated were the most participative to promote democracy and impartiality.

Non-Participation in Referendum on Recent Constitutional Amendments

Table 3-4 displays the proportional distribution of individuals of 18 years and older in terms of the non participation in the referendum on recent constitutional amendments and the reasons for this in accordance with background characteristics. Some 37% of respondents said they did not participate in the referendum on recent constitutional amendments. This rate rose to 46% among females and 29% among males. The rate of those who did not participate in the referendum was higher among Muslims than among Christians (37% compared with 26% respectively). There were not clear differences in the rate of non-participation in various age categories. Nevertheless it was higher in age category 23-29 (42%) and less in age category 40-49 (29%). It was expected that the rate would increase among the category of those unemployed than that of those employed at a rate of 44% and 28% respectively. It was also noted that the rate of non-participation was higher among the uneducated where it reached almost 50% who had not been to school and dropped to 25% among respondents who received a university education and higher.

As it was previously mentioned, the respondents who did not participate in the referendum were asked about the reasons for their non-participation. Some 43% of respondents said they were busy, 17% said they were not able to go (health reasons) and 12% noted they were lazy/not interested. The rest of reasons were referred to by 6% or less of respondents. These ratios varied according to the background characteristics. Some 53% of males said they were busy so they did not participate. This is considered a very high rate compared with the rest of reasons while the rate among females was around 35%. As was expected, around two thirds of respondents who were age 60 and older said they were not able to go compared with only 8% of respondents age 39 or younger. According to the educational status, 16% of respondents who had finished their primary education said they did not participate out of laziness/indifference compared with 8% of respondents who had received university education or more. As expected, 59% of respondents currently employed said they were busy at the time of making the referendum compared with 34% of respondents who are currently unemployed.

<p align="center">Table 3-4 not participating in referendum on recent constitutional amendments Relative distribution of individuals of 18 years and more who didn't participate in referendum on recent constitutional amendments and the reasons for that according to background characteristics, survey of opinion poll on 2011 constitution</p>																		
Background characteristics	rate	number	Crowd in committees	Inability to go (health reasons)	Not having national ID card	I was busy	Family refusal/customs & traditions/women are not allowed to go to elections	I know nothing about amendments	Ignorance of times of referendum	Lazy/not interested	He is with old regime	Remoteness of place of referendum/doesn't know the place	None of my voice	I don't have the right to vote (police man)	Afraid of thugs	Not used to take part in referendums	Below 18 years	total

Place of residence																			
Urban areas	34.1	2068	6.7	20.0	2.8	42.6	2.8	6.1	0.4	13.2	0.0	0.6	2.6	1.7	1.0	1.6	0.1	70.5	
Rural areas	39.7	1516	4.2	14.1	6.1	42.4	10.0	3.8	1.5	9.5	0.3	1.0	3.7	3.8	0.3	1.8	0.2	60.2	
Gender																			
Male	28.5	1949	5.2	12.6	2.2	52.8	0.0	5.6	0.7	11.5	0.4	0.7	2.5	6.3	0.0	0.9	0.2	55.5	
female	46.0	1635	5.7	20.7	6.0	34.8	10.6	4.7	1.1	11.4	0.0	0.8	3.5	0.0	1.2	2.3	0.1	75.2	
Age																			
18-22	41.2	391	8.1	7.5	8.1	47.2	5.0	6.8	0.6	9.3	0.0	1.2	1.9	1.9	0.6	2.5	1.2	16.1	
23-29	42.3	624	2.7	8.3	7.6	45.8	6.1	3.4	1.5	13.3	0.0	0.8	6.1	3.0	0.4	2.7	0.0	26.4	
30-39	37.1	946	7.4	8.0	3.4	47.3	7.7	6.6	0.3	10.3	0.3	0.6	3.4	4.6	1.7	0.9	0.0	35.1	
40-49	29.1	708	8.3	11.2	2.4	48.1	8.3	5.8	1.0	9.7	0.0	0.5	1.5	2.9	0.5	1.9	0.0	20.6	
50-59	32.2	497	3.1	20.6	3.1	40.6	5.6	6.3	1.9	14.4	0.0	1.9	3.1	0.6	0.0	1.9	0.0	16.0	
60+	39.5	418	2.4	65.5	1.2	17.0	1.8	0.6	0.6	12.7	0.6	0.0	0.6	0.6	0.0	0.6	0.0	16.5	
Religion																			
Muslim	37.1	3384	5.6	17.3	4.3	42.6	6.2	5.0	1.0	11.3	0.2	0.8	2.9	2.7	0.6	1.8	0.2	12.55	
Christian	26.0	200	3.8	17.3	5.8	38.5	3.8	5.8	0.0	15.4	0.0	0.0	5.8	1.9	3.8	0.0	0.0	5.2	
Educational status																			
Never gone to school	48.7	602	3.1	25.9	5.5	32.1	11.6	4.8	2.0	13.0	0.0	0.7	2.4	0.7	0.3	2.0	0.0	29.3	
Never completed primary school	38.1	242	5.3	31.6	4.2	33.7	2.1	2.1	3.2	14.7	0.0	1.1	2.1	1.1	1.1	1.1	0.0	5.6	

Completed primary school	44.4	261	4.2	18.5	4.2	37.0	7.6	6.7	0.0	16.0	0.0	0.8	2.5	3.4	0.0	1.7	0.0	15.8
Completed preparatory school	41.4	232	8.3	14.6	4.2	40.6	3.1	7.3	0.0	12.5	0.0	0.0	5.2	3.1	2.1	1.0	1.0	9.6
Completed secondary school / above medium	35.8	1477	6.1	11.2	4.6	49.0	5.1	4.8	0.4	10.1	0.4	1.0	3.2	3.2	0.6	1.5	0.2	48.3
University and more	23.1	770	7.3	14.0	2.2	49.4	2.8	5.6	0.6	7.9	0.0	0.6	3.4	4.5	1.1	2.2	0.0	17.8
Occupation Status																		
Currently Employed	27.9	1678	6.2	5.6	1.7	58.5	0.6	5.6	1.3	11.1	0.2	0.6	3.4	5.8	0.2	0.6	0.0	46.8
Currently Not Employed	44.0	1906	5.1	23.8	5.8	33.5	9.2	4.8	0.7	11.7	0.1	0.8	2.9	1.0	1.0	2.3	0.2	83.9
Total	36.5	1307	5.5	17.3	4.4	42.5	6.1	5.0	0.9	11.5	0.2	0.8	3.1	2.7	0.7	1.7	0.2	130.7
Number	--	--	72.0	226.0	57.0	55.0	80.0	66.0	12.0	150.0	2.0	10.0	40.0	35.0	9.0	22.0	2.0	--

3-5 Tendency Towards Recent Constitutional Amendments in Egypt

Table 3-5 tendency towards recent constitutional amendments in Egypt				
Relative distribution of individuals of 18 years and more regarding their stance of recent constitutional amendments in Egypt according to their participation in referendum and being affected by others in taking this stance as well as some background characteristics, survey of opinion poll on 2011 constitution				
	Neutral/doesn't know	Don't agree to amendments	Agree to amendments	Background characteristics
				Participation in referendum
	0.7	15.6	83.6	I participated
	17.4	12.9	69.8	I didn't participate
				Influence by others opinion
	0.0	16.6	83.4	I wasn't influenced
	0.0	27.1	72.9	Influenced by some politicians
	0.0	11.7	88.3	Influenced by some media men
	0.0	15.3	84.7	Influenced by some clergy men
	0.0	14.3	85.7	Influenced by Islamic groups (brotherhood, salafists....etc)
	0.0	10.4	89.6	Influenced by friends/friends/neighbors
	0.0	25.0	75.0	Others
				Place of residence
	7.1	19.1	73.8	Urban areas
	6.5	8.4	85.1	Rural areas
				Gender
	6.1	14.6	79.3	Male
	7.6	14.7	77.7	female
				Age
	7.4	16.1	76.5	18-22
	8.0	13.5	78.5	23-29

	6.3	14.3	79.4	30-39	
	5.5	15.4	79.1	40-49	
	6.2	16.5	77.3	50-59	
	8.4	12.2	79.4	60+	
				Religion	
	6.6	11.7	81.6	Muslim	
	10.0	63.5	26.5	Christian	
				Educational status	
	12.3	7.5	80.2	Never gone to school	
	7.9	9.1	83.1	Never completed primary school	
	7.7	6.5	85.8	Completed primary school	
	9.1	12.9	78.0	Completed preparatory school	
	5.9	14.2	80.0	Completed secondary school/above medium	
	3.0	26.1	70.9	University and more	
				Occupation Status	
	5.5	16.3	78.2	Currently Employed	
	8.0	13.1	78.9	Currently Not Employed	
	6.8	14.6	78.6	Total	
	244	524	2816	Number	

The respondents were asked about their opinion in recent constitutional amendments in Egypt. Table 3-5 displays the proportional distribution of individuals of 18 years and older regarding their stance on the recent constitutional amendments in terms of their participation in the referendum and being influenced by others in taking a stance as well as some background characteristics. The table indicates that some 79% of respondents agreed with recent constitutional amendments while around 15% of respondents did not agree and 7% said they do not know or were neutral.

Regarding participation in the referendum, the rate of respondents who took part in the referendum and agreed to constitutional amendments was 84% compared with 70% who did not participate and agreed to the amendments. In terms of those who were influenced by others in determining their opinion, the rate of respondents agreeing to constitutional amendments who were affected by friends/relatives/neighbors was around 90% compared to 73% of respondents who were affected by politicians. There were variations in accordance with the respondents' background characteristics.

In terms of the place of residence, the rate of respondents in rural areas who agreed to constitutional amendments was 85% against 74% for respondents living in urban areas. Regarding gender, the rate of male respondents who agreed to constitutional amendments was 79% against 78% for females. In terms of age, the rate of respondents who agreed to constitutional amendments in age category 30-39 and 60+ was 79% for both categories against 77% for respondents in age categories 18-22 and 50-59. As for religion, the rate of Muslim respondents who agreed to constitutional amendments was around 82% against only 27% for Christian respondents. Pertaining to educational status, the rate of respondents who had never been to school and agreed to constitutional amendments was around 80% compared with 71% of respondents who received university education and higher.

Reasons for Approving Constitutional Amendments

Table 3-6 displays the reasons for individuals of 18 years and older to approve the constitutional amendments. As the table shows, 72% of respondents 18 years and older agreed to the constitutional amendments out of belief that this would help maintain the state's stability and interests while 23% of respondents of 18 years and older approved of the constitutional amendments believing that this would help amend certain laws for the better. Some 6% of respondents 18 years and older agreed to the constitutional amendments out of belief that the majority approved or that they were under the influence of some trends.

As for the background characteristics, there were not obvious differences in terms of religion where the rate of Christians was higher than that of Muslims (81% against 72%) who approved to the constitutional amendments out of belief that this was for the country's best interest and stability.

Table 3-6 reasons for approving constitutional amendments						
Relative distribution of individuals of 18 years and more who support constitutional amendments according to their views regarding the reasons for approving these amendments, according to background characteristics, survey of opinion poll on 2011 constitution						
Background characteristics	For the state's best interest and stability	Amending certain laws for the better	Keeping Article II as it is	They told me to say "yes"/ the majority said "yes"	Because Christians said "no"	Because the military council put the amendments and should be respected
Place of residence						
Urban areas	72.4	22.9	3.3	4.1	0.1	0.1
Rural areas	72.2	23.4	1.7	8.1	0.0	0.1
Gender						
Male	72.3	23.7	2.7	5.2	0.1	0.1
female	72.3	22.5	2.4	6.9	0.0	0.1
Age						
18-22	68.9	27.1	2.0	7.4	0.0	0.0
23-29	74.0	23.3	3.1	4.5	0.4	0.2
30-39	71.9	23.4	2.9	5.3	0.0	0.1
40-49	71.1	24.8	3.8	4.8	0.0	0.0
50-59	74.2	19.3	1.6	8.3	0.0	0.0
60+	73.5	20.5	0.9	7.2	0.0	0.0
Religion						
Muslim	72.1	23.2	2.6	6.0	0.1	0.1
Christian	81.1	20.8	0.0	1.9	0.0	0.0
Educational status						
Never gone to school	75.6	16.6	0.0	11.2	0.0	0.2
Never completed primary school	71.1	19.4	1.5	10.9	0.0	0.0
Completed primary school	67.4	28.6	0.9	9.4	0.0	0.0

	Completed preparatory school	74.4	21.5	1.7	6.1	0.6	0.0	
	Completed secondary school/above medium	70.8	24.9	4.2	4.5	0.1	0.0	
	University and more	74.4	24.9	2.7	1.1	0.0	0.2	
	Occupation Status							
	Currently Employed	72.4	24.0	3.0	4.2	0.2	0.1	
	Currently Not Employed	72.1	22.4	2.3	7.4	0.0	0.1	
	Total	72.3	23.2	2.6	5.9	0.1	0.1	
	Number	2034	652	73	167	2	2	

Reasons for Not Approving Constitutional Amendments

The respondents who did not approve of the constitutional amendments were asked about the reasons of their refusal. Table 3-7 displays the proportional distribution of individuals of 18 years and older in accordance with reasons for refusing constitutional amendments in terms of background characteristics. Some 84% of respondents said they did not approve of the constitutional amendments because the amendments were not a complete change to the constitution (patch-work constitution) while 8% said that the reason was that the conditions in the country were the same. 3% said that the revolution had brought down the constitution and 2% said the reason for their refusal was the lack of equality between Muslims and Christians (the state persecutes Christians). There were also some differences according to background characteristics. In general, the respondents from urban areas, males, seniors, Muslims, better-educated and those employed said they did not agree to the recent constitutional amendments because they were not a complete change to the constitution.

	<u>Table 3-7 reasons for not approving constitutional amendments</u>							
	Relative distribution of individuals of 18 years and more in terms of refusal of constitutional amendments and background characteristics, , survey of opinion poll on 2011 Constitution							

Background characteristics	Because this is not full change of constitution	Revolution brought down constitution	Supports old regime and doesn't want change	Because conditions in the state are the same	Afraid of changing second article	Majority said "no" so I said "no"	So as the country would not be governed by brotherhood and salafists	Lack of equality between Muslims and Christians (state persecutes Christians)	
Place of residence									
Urban areas	84.1	3.0	1.0	6.6	0.5	1.8	1.3	2.3	
Rural areas	82.0	2.3	1.6	10.9	0.8	0.8	2.3	1.6	
Gender									
Male	85.2	1.4	1.8	6.7	0.7	1.8	1.8	1.8	
female	81.7	4.6	0.4	8.8	0.4	1.3	1.3	2.5	
Age									
18-22	81.0	3.2	0.0	7.9	1.6	1.6	3.2	1.6	
23-29	84.5	1.2	0.0	9.5	0.0	0.0	3.6	2.4	
30-39	83.0	5.2	2.2	6.7	0.7	1.5	0.0	2.2	
40-49	80.7	1.8	0.9	9.2	0.9	1.8	1.8	2.8	
50-59	89.0	1.2	1.2	6.1	0.0	2.4	0.0	1.2	
60+	84.3	3.9	2.0	5.9	0.0	2.0	2.0	2.0	
Religion									
Muslim	84.4	2.3	1.5	9.3	0.8	0.8	1.5	0.3	
Christian	81.1	4.7	0.0	2.4	0.0	3.9	1.6	7.9	
Educational status									
Never gone to school	64.4	2.2	2.2	20.0	0.0	6.7	4.4	2.2	
Never completed primary school	81.8	0.0	0.0	13.6	0.0	4.5	0.0	4.5	
Completed primary school	82.4	0.0	5.9	5.9	0.0	0.0	0.0	5.9	
Completed preparatory school	90.0	0.0	0.0	6.7	0.0	0.0	0.0	3.3	

Completed secondary school/ above medium	85.2	2.4	1.0	6.7	1.0	1.4	1.9	1.4	
University and more	85.6	4.5	1.0	5.5	0.5	0.5	1.0	2.0	
Occupation Status									
Currently Employed	85.4	2.9	1.5	6.9	0.7	1.5	0.7	1.8	
Currently Not Employed	81.6	2.8	0.8	8.4	0.4	1.6	2.4	2.4	
Total	83.6	2.9	1.1	7.6	0.6	1.5	1.5	2.1	
Number	438	15	6	40	3	8	8	11	

Other Articles that Need Amendment in Egyptian Constitution

The respondents were asked about the other articles of constitution which need amendment. Tables 3-8A and 3-8B display the rate of individuals of 18 years and older in accordance with their opinions regarding the other articles that need amending in the Egyptian Constitution along with defining these articles in accordance with background characteristics. The table shows that 13% of respondents said there were other articles that needed amending and there were variations according to respondents' background characteristics.

In terms of the place of residence, the rate of respondents in urban areas who said there were articles that needed amending was around 17% against only 8% of respondents in rural areas. In terms of age, the rate of respondents in age category 40-49 who said that there are articles that needed amending was some 16% against 11% in age category 60+. As for religion, the rate of Christian respondents who said there were articles that needed amending was some 38% compared with 12% of Muslim respondents. Pertaining to educational status, as was expected, 28% of respondents with a university education or higher said there were articles that needed amending against some 6% of respondents who had never been to school. In terms of job status, the rate of respondents who were employed and who said there were articles that needed amending was 15% compared with 12% of respondents who were unemployed. There were not obvious differences in terms of gender.

																	Gender
	0.4	5.0	1.2	2.7	3.8	0.0	6.5	0.4	7.7	0.8	5.0	1.5	20.0	1949	13.3	Male	
	0.0	6.2	0.5	0.9	3.8	1.9	6.2	0.0	4.7	0.0	6.2	3.3	14.7	1635	12.9	Female	
																Age	
	0.0	4.3	0.0	2.1	2.1	0.0	6.4	0.0	4.3	0.0	10.6	0.0	14.9	391	12.0	18-22	
	0.0	6.8	0.0	0.0	1.4	0.0	6.8	0.0	6.8	1.4	2.7	5.5	13.7	624	11.7	23-29	
	0.8	3.9	0.8	3.1	3.9	2.3	5.4	0.0	9.3	0.8	7.0	1.6	18.6	946	13.6	30-39	
	0.0	8.6	0.9	2.6	2.6	0.9	9.5	0.9	3.4	0.0	6.0	1.7	20.7	708	16.4	40-49	
	0.0	6.5	1.6	1.6	6.5	0.0	3.2	0.0	9.7	0.0	1.6	3.2	17.7	497	12.5	50-59	
	0.0	0.0	2.3	0.0	9.1	0.0	4.5	0.0	2.3	0.0	4.5	2.3	15.9	418	10.5	+60	
																Religion	
	0.3	6.3	1.0	2.3	4.5	1.0	7.3	0.3	7.1	0.5	6.1	2.5	19.2	3384	11.7	Muslim	
	0.0	1.3	0.0	0.0	0.0	0.0	1.3	0.0	2.7	0.0	2.7	1.3	9.3	200	37.5	Christian	
																Education Status	
	0.0	2.9	2.9	2.9	2.9	0.0	8.8	0.0	2.9	0.0	0.0	2.9	11.8	602	5.6	Never gone to school	
	0.0	0.0	5.3	5.3	10.5	0.0	5.3	0.0	10.5	0.0	10.5	0.0	10.5	242	7.9	Never finished primary school	
	0.0	0.0	0.0	0.0	5.6	0.0	16.7	0.0	5.6	0.0	5.6	0.0	11.1	261	6.9	finished primary school	
	0.0	5.3	0.0	0.0	10.5	0.0	5.3	0.0	5.3	0.0	5.3	5.3	0.0	232	8.2	finished preparatory school	

																		finishe d second ary school/ above mediu m educati on
	0.6	3.6	0.6	1.8	4.7	1.2	5.9	0.0	8.9	0.6	5.9	3.6	17.2	147 7	11.4			
	0.0	8.5	0.5	1.9	1.9	0.9	5.7	0.5	4.7	0.5	5.7	1.4	21.7	770	27. 5			Univer sity educati on/ higher
																		Work Status
	0.4	6.3	0.8	2.8	3.2	0.0	6.3	0.4	6.7	0.4	5.2	1.2	19.8	167 8	15. 0			Current ly employ ed
	0.0	4.6	0.9	0.9	4.6	1.8	6.4	0.0	5.9	0.5	5.9	3.7	15.1	190 6	11.5			Current ly not employ ed
	0.2	5.5	0.8	1.9	3.8	0.8	6.4	0.2	6.4	0.4	5.5	2.3	17.6	517 9	13. 1			Total

According to the place of residence, the respondents in the urban areas who said that the article of the president's jurisdiction needs to be amended was about 19% compared with 15% of the respondents in the countryside. As regards gender, the ratio of male respondents who said that the article of the president's jurisdictions needed to be amended was almost 20% compared with 15% of females. As for the age, the respondents in the age category 40-49 years who said that the article of the president's jurisdictions needs to be amended was about 21% compared with 14% of the respondents in the age group 23-29 years of age. As regards the religion, the percentage of Muslim respondents who said that the article of the president's jurisdictions needed to be amended was almost double that of the Christian respondents (19% and 9% respectively). As for the educational status, as was expected, 22% of the respondents with a university education and higher said the article of the jurisdictions of the president of the republic needs to be amended compared with only 11% of the respondents who finished or had not finished their primary education. Concerning the work status, about 22% of the

respondents who were employed said that the article of the president's jurisdictions needed to be amended compared with 15% of the respondents who were unemployed at the time.

As regards the amendment of the labor law/workers statute, there were differences according to the backgrounds of the respondents. Concerning the place of residence, the ratio of respondents who said that labor law/workers statute needed to be amended, in the urban places it was only one-fifth of the percentage of respondents in the rural ones (3% and 16% respectively). According to age, the ratio of respondents in the age category 40-49 who said that the labor law/workers statute needed to be amended was around 10% compared with 3% of the respondents in the age category of 50-59. Whereas according to the religion, the ratio of Muslims who said that the article pertaining to the labor law/workers statute needed to be amended was 7% compared to only 1% of Christians. As per education status, the ratio of respondents who finished their primary education and said that labor law needed to be amended was around 17% compared with 5% of the respondents to both other stages of education: those who had not finished their primary education and those who received a university education and higher. Regarding work status, there were not notable differences among respondents who were employed and said the labor law/workers statute needed to be amended and those who were unemployed as the ratio was 6% for both of them.

As regards the respondents who were willing to change the entire constitution, according to place of residence, the ratio of respondents in the urban areas was almost 60% compared with 47% of the respondents in the rural areas. As per gender, male respondents who were willing to change the entire constitution were about 54% compared with 60% of females. According to age, the ratio of respondents in the age category 18-22 who are willing to change the constitution was 68% compared with about 50% of the age category 40-49. Regarding the religion, the percentage of Muslim respondents who are willing to change the whole constitution was around 56% compared with 61% of Christians. According to the education status, the ratio of respondents who finished their preparatory school and were willing to change the whole constitution was around 79% compared with 47% of the respondents who had not finished their primary education. According to the work status, the respondents who were employed and were willing to change the whole constitution was around 55% compared with 58% of those who were unemployed.

	44	63.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	2.3	0.0	4.5	2.3	0.0	+60	
																					Religion
	396	55.6	0.3	0.3	0.3	0.3	0.5	0.3	0.0	0.8	0.3	0.5	0.3	1.0	1.3	2.3	1.3	0.3	0.3	Muslim	
	75	61.3	0.0	0.0	0.0	0.0	0.0	0.0	1.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	29.3	1.3	0.0	Christian	
																					Educational Status
	34	64.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2.9	8.8	0.0	2.9	0.0	Never gone to school	
	19	47.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.3	0.0	5.3	5.3	0.0	0.0	Never finished primary school	
	18	50.0	0.0	5.6	5.6	0.0	0.0	0.0	0.0	5.6	0.0	0.0	0.0	0.0	5.6	5.6	11.1	0.0	0.0	finished primary school	
	19	78.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	5.3	5.3	0.0	finished preparatory school	
	169	54.4	0.0	0.0	0.0	0.0	1.2	0.6	0.0	0.6	0.0	0.6	0.0	0.0	1.2	1.2	7.7	0.0	0.0	finished secondary school/ above medium education	
	212	56.1	0.5	0.0	0.0	0.5	0.0	0.0	0.5	0.5	0.5	0.5	0.5	1.4	0.5	0.9	4.7	0.0	0.5	University education/higher	
																					Work Status
	252	54.8	0.4	0.0	0.0	0.0	0.0	0.0	0.4	0.0	0.4	0.0	0.0	0.8	0.8	2.8	7.1	0.4	0.4	Currently employed	
	219	58.4	0.0	0.5	0.5	0.5	0.9	0.5	0.0	1.4	0.0	0.9	0.5	0.9	1.4	0.9	4.1	0.5	0.0	Currently not employed	
	471	56.5	0.2	0.2	0.2	0.2	0.4	0.2	0.2	0.6	0.2	0.4	0.2	0.8	1.1	1.9	5.7	0.4	0.2	Total	

4-3 Tendency towards Priority of Changing the Constitution or the PA Elections

Table 3-9 presents the relative distribution of individuals at the age of 18 years and above according to the priority of the constitution or the People's Assembly elections in view of some background characteristics. The table shows that 29% of the respondents saw that constitution should be first while 21% saw that the People's Assembly elections should come first. In the meantime, half of the respondents noted that they do not know/there is no difference. Such results vary according to the background characteristics. According to the place of residence, 32% of the respondents in the urban areas said they believed that constitution was first while 22% said that the Peoples' Assembly elections should be first. Such percentages in the rural areas were 25% and 20% respectively. It was noted that the same thing applies to gender: about 31 % of males said they believe that constitution should be first while 24% of them said the PA elections should come first. Such ratios among females were 26% and 18% respectively. As per age, the table clarifies those respondents in the older age categories had the largest numbers in saying that they do not know/there is no difference. As for the religion, about 46% of Christians said they believed that constitution should be first in comparison to 28% of Muslims while 22% of Muslims felt that there was a priority in holding the PA elections first compared with 11% of the Christians.

Table 3-9 Tendencies Towards Priority of Changing the Constitution or The PA elections				
The relative distribution of individuals at the age of 18 and above according to the priority of the constitution or the PA elections and some background characteristics, opinion survey on the constitution 2011.				
	Don't know/no difference	Constitution first	People's Assembly first	Background Characteristics
				Place of Residence
	46.0	31.7	22.3	Urban areas
	54.8	25.3	19.9	Rural areas
				Gender
	44.6	31.1	24.3	Male

	55.6	26.3	18.1	Female	
				Age	
	48.2	29.4	22.4	18-22	
	45.9	32.4	21.7	23-29	
	45.3	32.4	22.3	30-39	
	47.1	29.7	23.2	40-49	
	51.2	26.6	22.2	50-59	
	66.9	18.6	14.5	+60	
				Religion	
	50.6	27.8	21.7	Muslim	
	43.0	45.8	11.2	Christian	
				Education Status	
	75.3	12.5	12.2	Never gone to school	
	60.7	25.0	14.3	Never finished primary school	
	60.2	22.3	17.5	finished primary school	
	50.5	26.1	23.4	finished preparatory school	
	38.1	35.9	26.0	finished secondary school/above medium education	
	20.4	48.6	31.0	University education/higher	
				Work Status	
	42.3	32.8	24.9	Currently employed	
	55.7	25.8	18.5	Currently not employed	
	50.2	28.6	21.1	Total	
	2601	1483	1095	Number	

The table shows that there were clear differences according to the education levels. Those with higher education levels were more inclined to express their opinions. For example, 75% of the respondents who had never gone to school said they did not know or there is no

difference in the priority of the constitution or the People's Assembly elections. Such percentages decreased to 20% among the respondents who received university education or higher. With regard to work status, 33% of respondents who were employed said the constitution should be first while 25% said the People's Assembly elections should come first. Such percentages among unemployed persons were 26% and 19% respectively.

Tendency towards the Priority of Changing the Constitution First

Table 3-10 presents the relative distribution of individuals age 18 years and above who were mostly supportive of changing the constitution first for reasons of the priority of changing the constitution and some background characteristics. The ratio of individuals at this age range who backed the idea of changing the constitution first ahead of holding the People's Assembly elections was around 29% with differences according to background characteristics. The percentage of supporters to changing the constitution first was higher in the urban areas than the rural ones (32% and 25% respectively) and was also higher among males than females (31% and 26% respectively). Moreover, ratios were higher among respondents in the younger age categories and among highly-educated persons. Also, the ratio was higher among Christians than Muslims (46% and 28% respectively) and among those who were employed rather than those who were unemployed (33% and 26% respectively).

Concerning the reasons for backing a change to the constitution first, the main reason mentioned cited by respondents was that there should be proper laws to be applied before the elections in order to choose the members on correct bases (81%). Moreover, about 17% said changing the constitution first would stabilize the country while 3% felt that changing the constitution first would prevent any political power that wanted to dominate the new constitution or any committees formed to draft it from drafting it to serve their interests. It is worth noting that there were differences according to the background characteristics. We found that persons in rural areas, older ages, Muslims and the less educated were the most supportive of changing the constitution first in order to stabilize the country. On the contrary, respondents in the urban areas, Christians and the highly-educated were the most supportive of changing the constitution first in order to have correct laws applied before the elections and choosing the members on correct bases. As regards other reasons, differences according to the background characteristics were very few.

Table 3-10 Tendency Towards The Priority of Changing the Constitution First									
The relative distribution of individuals at the age of 18 years and above who support changing the constitution first according to the reasons behind the priority of changing the constitution and some background characteristics, opinion survey on the Constitution 2011.									
Total	To increase number of parties in PA	To realize stability of the country	In order not to let political powers control the new constitution and the committees formed to outline it then see a constitution realize their interests/to prevent Muslim Brotherhood from overwhelming PA/fear of controlling the rule once again	To avoid forging as past times	There should be correct laws to be applied before the elections to choose the members on right bases	Supporters of changing the constitution first		Background Characteristics	
						Number	Ratio		
									Place of Residence
858	0.1	13.4	3.6	2.7	83.0	2707	31.7	Urban areas	
625	0.5	20.6	2.1	1.8	79.2	2472	25.3	Rural areas	
									Gender
789	0.4	16.9	3.5	1.9	81.4	2537	31.1	Male	
694	0.1	16.0	2.3	2.7	81.4	2642	26.3	Female	
									Age
160	1.3	13.8	4.4	1.3	81.9	544	29.4	18-22	
283	0.4	15.5	2.5	1.1	82.7	874	32.4	23-29	
411	0.2	17.5	3.2	3.2	79.8	1267	32.4	30-39	
286	0.0	15.7	3.8	2.8	82.5	963	29.7	40-49	
194	0.0	17.5	1.5	2.6	80.4	730	26.6	50-59	
149	0.0	18.1	2.0	2.0	81.9	801	18.6	+60	

									Religion	
1368	0.3	17.4	2.9	2.3	80.7	4928	27.8		Muslim	
115	0.0	5.2	4.3	1.7	89.6	251	45.8		Christian	
									Education Status	
187	0.0	29.4	1.6	2.1	72.7	1493	12.5		Never gone to school	
91	0.0	19.8	1.1	8.8	72.5	364	25.0		Never finished primary school	
92	0.0	20.7	5.4	2.2	75.0	412	22.3		finished primary school	
87	1.1	20.7	2.3	1.1	78.2	333	26.1		finished preparatory school	
638	0.3	16.1	3.1	2.4	82.1	1778	35.9		finished secondary school/above medium education	
388	0.3	8.0	3.4	1.0	88.7	799	48.6		University education/higher	
									Work Status	
695	0.1	16.4	3.9	2.6	80.3	2121	32.8		Currently employed	
788	0.4	16.5	2.2	2.0	82.4	3058	25.8		Currently not employed	
1483	0.3	16.5	3.0	2.3	81.4	5179	28.6		Total	
--	4	244	44	34	1207	--	--		Number	

Tendency towards Holding People's Assembly Elections First

Table 3-11 presents the relative distribution of individuals age of 18 years and older who were mostly supportive of holding the People's Assembly elections first as a priority and some background characteristics.

Table 3-11 Tendency Towards Holding People's Assembly Elections First									
The relative distribution of individuals at the age of 18 years and above who support holding the People's Assembly elections first according to the reasons for the priority of holding the elections of the People's Assembly and some backgrounds, opinion survey on the Constitution 2011.									

Total	In respect of the referendum which okayed the amendment first then elections	In order to elect a president of the state first	In order not to take a long time to outline a new constitution	Because the People's Assembly will form committees to draft the constitution and it is going to approve it	Because of the country's interests and stability	Supporters of holding the elections first		Background Characteristics	
						Number	Ratio		
								Place of Residence	
603	0.3	8.5	0.8	62.5	34.3	2707	22.3	Urban areas	
492	0.2	11.8	1.4	59.3	37.0	2472	19.9	Rural areas	
								Gender	
616	0.3	9.3	1.0	62.2	35.7	2537	24.3	Male	
479	0.2	10.9	1.3	59.7	35.3	2642	18.1	Female	
								Age	
122	0.0	6.6	0.0	73.8	25.4	544	22.4	18-22	
190	0.5	7.4	1.6	64.2	33.2	874	21.7	23-29	
282	0.4	13.1	1.8	57.1	39.0	1267	22.3	30-39	
223	0.0	11.7	0.4	63.2	33.2	963	23.2	40-49	
162	0.6	9.3	1.2	55.6	39.5	730	22.2	50-59	
116	0.0	7.8	0.9	56.0	40.5	801	14.5	+60	
								Religion	
1067	0.3	10.2	1.1	61.1	35.3	4928	21.7	Muslim	
28	0.0	0.0	0.0	60.7	42.9	251	11.2	Christian	
								Education Status	
182	0.0	14.8	0.0	40.1	49.5	1493	12.2	Never gone to school	
34	0.0	19.2	0.0	42.3	46.2	364	14.3	Never finished primary school	
90	0.0	8.3	2.8	55.6	44.4	412	17.5	finished primary school	
78	0.0	9.0	0.0	65.4	38.5	333	23.4	finished preparatory school	

	375	0.6	9.3	1.1	66.1	31.3		1778	26.0	finished secondary school/above medium education
	292	0.0	6.5	2.0	71.4	27.4		799	31.0	University education/higher
										Work Status
	528	0.4	8.9	1.1	62.1	36.9		2121	24.9	Currently employed
	567	0.2	10.9	1.1	60.1	34.2		3058	18.5	Currently not employed
								2707		
	1095	0.3	10.0	1.1	61.1	35.5		2472	21.1	Total
	--	3	109	12	669	389		--	--	Number

About 21% of responding individual age of 18 years and older were the most supportive for holding the People’s Assembly elections first before changing the constitution. The ratio of supporters to holding the elections first was much higher among the urban people than the rural (22% and 20 % respectively) and among males than females (24% and 18% respectively). Moreover, the ratio was much higher among respondents in the younger age categories and among the highly-educated. Also, the percentage was higher among Muslims than Christians (22% and 11% respectively) as well as those employed versus unemployed (25% and 19% respectively).

As regards the reasons for the priority of holding the People’s Assembly elections, 61% of the respondents said that the People’s Assembly would form committees to draft the constitution from among persons they would trust and they would approve such a constitution. Also, 36% of individuals supportive of the priority of holding PA elections believed that such a step would stabilize the country and achieve its interests. About 10% of the individuals felt that there was a priority in holding PA elections before changing the constitution in order to elect a president given some differences according to the background characteristics. Respondents in the rural areas, older ages, Christians and the less educated were the most supportive of holding PA elections first in order to stabilize the state. On the contrary, respondents in the urban areas, males, younger ages and the higher educated were supportive of holding PA

elections because such a parliament would form committees of trusted people to draft the constitution and such a parliament would approve the new constitution.

Citizens' Viewpoints about Article II of the Constitution

With reference to what was mentioned in chapter one, Article II of the Constitution has raised a debate in the recent period and discussions have varied on whether to keep, amend or annul such article. The study included a set of questions covering several points on Article II of the Constitution. The respondents have been questioned on whether they know Article II of the Constitution and its items and whether they heard about the proposals of amending the article, the content of such proposals and the persons who suggested such amendment as well as the opinions of the respondents on keeping, amending or annulling the article. Herein follows a review of the results of such questions.

4-1 Knowledge about Article II of the Constitution

Table 4-1 presents a relative distribution of individuals at the age of 18 years and above who were interviewed during the survey according to whether or not they heard about Article II of the Constitution and according to their selected backgrounds. Data in the table shows that only 36% of the respondents heard about Article II of the Constitution. Concerning the respondents who have not before heard about Article II of the Constitution, the three paragraphs of Article II have been read out to them and they were asked whether they heard about it. About 43% of the respondents who have not heard about Article II of the Constitution said they know that Islam is the religion of the state, one-quarter of the respondents said Arabic is the main language of the state, while 35% said they heard the paragraph that the Islamic *sharī'ah* is the main source of legislation. There have been clear differences according to the background characteristics. About 40% of the urban population heard about Article II of the Constitution compared with 26% of the rural people. Also, 37% of the males said they heard about the Article compared with 29% of the females. While according to the age, it is noted that the older age categories were much less hearing about Article II of the Constitution. As per the religion, 42% of the Christians heard about the article compared with 33% of the Muslims. According to the education status, the differences were much clearer as 67% of the respondents who received university education or higher said they heard about Article II of the Constitution in comparison with 9% of the people who have never gone to school. With regard

to the work status, 40% of the respondents who are currently employed said they heard about the article compared with 28% of those who are not currently employed.

Table 4-1 Knowing About Article II of the Egyptian Constitution			
The relative distribution of individuals at the age of 18 and above who heard about Article II of the Egyptian Constitution according to the items of the Article, if they heard about the Egyptian Constitution, their stances from the constitutional amendments, their participation in the referendum with some backgrounds, opinion survey on the Constitution 2011.			
Did not hear about Article II	Heard About Article II	Background characteristics	
64.0	36.0	Hearing about the constitution	
		Clauses of Article II	
43.0	-	Islam is the religion of the state	
24.5	-	Arabic is the main language	
35.1	-	Islamic shari'ah is the main source of legislation	
65.7	34.3	Approving the constitutional amendment	
54.5	45.5	Participation in the referendum	
		Place of Residence	
60.4	39.6	Urban areas	
74.5	25.5	Rural areas	
		Gender	
62.8	37.2	Male	
70.9	29.1	Female	
		Age	
64.0	36.0	18-22	
66.7	33.3	23-29	

	65.6	34.4	30-39	
	63.2	36.8	40-49	
	67.9	32.1	50-59	
	74.6	25.4	+60	
			Religion	
	67.0	33.0	Muslim	
	58.5	41.5	Christian	
			Education Status	
	90.7	9.3	Never gone to school	
	89.6	10.4	Never finished primary school	
	84.2	15.8	finished primary school	
	77.6	22.4	finished preparatory school	
	62.9	37.1	finished secondary school/above medium education	
	33.0	67.0	University education/higher	
			Work Status	
	60.4	39.6	Currently employed	
	71.8	28.2	Currently not employed	
	66.5	33.5	Total	
	2616	1315	Number	

As regards the approval of the recent constitutional amendments and participation in the referendum, data in the table refers to 66% approving the recent constitutional amendments and that 55% of those who participated in the referendum on the recent constitutional amendments had not heard about Article II of the Constitution.

Hearing about Amendment of Article II of the Constitution

Table 4-2 presents the distribution of individuals at the age of 18 years and above who heard about amendment of Article II of the Constitution and its amendment proposals according to their backgrounds. About 54 % of the respondents said they heard about amendment of Article II. The table refers to the presence of differences in the ration of those who heard about

amendment of Article II according to their background characteristics. Respondents who are urbans, males, younger ages, Christians, the higher educated as well as those who are currently employed were the most who have heard about the amendment compared with their counterparts. For example, 64% of the respondents who finished university education and higher said they heard about the amendment of Article II compared with 36% of the respondents who have never gone to school. Also, 65% of the Christians said they heard about the amendment of the Article compared with 53% of the Muslims.

Table 4-2 Hearing About Amendment of Article II of the Egyptian Constitution												
The ratio of individuals at the age of 18 years and above who heard about amendment of Article II of the constitution and the proposed amendments according to the background characteristics, opinion survey on the Constitution 2011.												
Proposals of amendment they heard about										I heard about amendments of Article II		

833	5.2	0.1	0.8	0.5	0.1	18.0	42.0	28.1	30.4	2537	55.5	Male
601	6.0	0.2	0.8	0.8	0.0	16.3	42.9	26.1	33.6	2642	51.2	Female
												Age
167	6.0	0.0	0.6	0.6	0.0	19.2	44.3	26.9	30.5	544	56.6	18-22
258	4.7	0.0	1.6	1.9	0.0	18.2	44.6	27.1	29.5	874	55.8	23-29
409	5.1	0.0	0.5	0.2	0.2	18.8	40.6	25.4	33.5	1267	57.6	30-39
279	5.4	0.4	0.7	0.4	0.0	15.1	39.8	29.4	31.9	963	51.6	40-49
190	6.8	0.5	0.5	0.5	0.0	16.3	45.3	26.8	32.6	730	52.5	50-59
131	6.1	0.0	1.5	0.0	0.0	14.5	42.7	29.8	30.5	801	43.1	+60
												Religion
1337	5.9	0.1	0.9	0.7	0.1	17.1	43.0	25.3	31.9	4928	53.0	Muslim
97	0.0	0.0	0.0	0.0	0.0	20.6	34.0	54.6	28.9	251	64.7	Christian
												Education Status
132	6.1	0.8	0.0	0.0	0.0	15.9	54.5	16.7	31.1	1493	35.5	Never gone to school
52	9.6	0.0	0.0	0.0	0.0	11.5	38.5	32.7	26.9	364	38.8	Never finished primary school
74	5.4	0.0	1.4	0.0	0.0	14.9	35.1	31.1	33.8	412	44.3	finished primary school

86	10.5	0.0	0.0	0.0	0.0	17.4	50.0	23.3	22.1	333	53.1	finish ed preparatory school
626	6.9	0.2	1.1	1.3	0.2	15.2	40.6	26.7	31.2	1778	55.9	finish ed secondary school / above medium education
464	2.2	0.0	0.9	0.2	0.0	21.6	41.6	30.6	34.7	799	64.4	Unive rsity education/ higher
												Work Status
754	4.6	0.3	0.8	0.5	0.1	19.6	41.1	27.5	29.8	2121	57.0	Curre ntly employed
680	6.5	0.0	0.9	0.7	0.0	14.7	43.8	27.1	33.8	3058	50.3	Curre ntly not employed
1434	5.5	0.1	0.8	0.6	0.1	17.3	42.4	27.3	31.7	2674	53.6	Total

The respondents were questioned about the proposals of the amendment of Article II of the Constitution that they had heard. About 42% of the respondents said the proposals of amendment are to cancel/annul the whole article, while 32% said they had heard of a proposal for canceling the paragraph of the Islamic *sharī'ah* as the main source of legislation. Around 27% said they heard about the addition of a sentence that all religions have the freedom in the state after that of the Islam is the religion of the state, while 17% noted that the amendment is that the Islamic *sharī'ah* is one of the sources of legislation. Moreover, 6% of the respondents said they did not know about the proposals for amending the article. The data included in table 4-2 highlights the presence of some differences in accordance with some background

characteristics. For example, 55% of the Christians said they heard about the addition of a sentence that all religions have freedom in the state after that of Islam being the religion of the state compared with only 25% of the Muslims. Also, most of the respondents who heard that there is a proposal for canceling/annulling the whole article were those who had never gone to school (55%). The differences were limited in accordance with the place of residence, gender, work status and age.

Reasons behind Proposals of Amending Article II of the Constitution

Table 4-3 presents the distribution of individuals at the age of 18 years and above who heard about Article II of the constitution and the proposals for its amendment according to the reasons behind such amendment and the background characteristics. About 67% of the respondents said the reasons for amendment is the pressure exercised by some non-Muslim intellectuals, while one-quarter of the respondents said it is a good step towards the civil state. Whereas 14 % said the reason is that one of the democratic principles is the equality between all Egyptians, while 12% pointed out the pressure exercised by some intellectuals for amending the article. Only 2% said the aim of such proposals for amending Article II was to stir up sedition in the country.

Table 4-3 Reasons behind Proposals of Amendment of Article II of the Constitution										
The relative distribution of individuals at the age of 18 and above who heard about the amendment of Article II of the Constitution and the proposals of amendment according to the reasons of its amendment and some background characteristics, opinion survey on the Constitution 2011.										
Reasons for the amendment proposals										Background Characteristics
Don't know	Others	Fear that the Muslim Brotherhood could govern the state	Fear of the wrong feelings that they are prejudiced	Because of the presence of the Christian parties that are attracted to the	Because of the presence of the destabilizing parties seeking to attract the	To stir up sedition in the country	Pressure by some intellectuals for amendment	Pressure exercised by some intellectuals for amendment	Because of democratic principles should guarantee equality between all Egyptians	

												Place of Residence
2.7	0.2	0.2	0.2	0.1	1.6	62.8	12.3	14.6	30.3			Urban areas
3.5	0.2	0.7	0.7	0.2	1.7	73.0	10.9	14.0	15.5			Rural areas
												Gender
3.5	0.2	0.5	0.5	0.0	1.8	65.9	13.2	14.5	24.5			Male
2.3	0.2	0.3	0.3	0.3	1.3	67.7	9.8	14.1	25.1			Female
												Age
3.6	0.6	0.0	0.0	0.0	1.8	65.3	7.2	17.4	23.4			18-22
3.5	0.4	0.0	0.0	0.0	1.6	70.5	11.2	13.2	23.6			23-29
2.0	0.0	0.2	0.2	0.2	1.7	67.7	11.2	15.9	23.0			30-39
3.2	0.4	0.4	0.4	0.0	1.1	66.3	16.5	11.8	21.9			40-49
3.2	0.0	0.5	0.5	0.5	2.6	65.3	13.2	14.2	30.5			50-59
3.8	0.0	2.3	2.3	0.0	0.8	60.3	8.4	13.7	32.1			+60
												Religion
3.2	0.2	0.4	0.4	0.1	1.6	70.0	11.8	12.6	22.1			Muslim
0.0	0.0	1.0	1.0	0.0	2.1	20.6	11.3	38.1	60.8			Christian
												Education Status
4.5	0.0	0.8	0.8	0.8	0.0	66.7	12.1	13.6	22.7			Never gone to school
5.8	0.0	1.9	1.9	0.0	0.0	63.5	7.7	15.4	21.2			Never finished primary school
4.1	0.0	0.0	0.0	0.0	4.1	71.6	4.1	13.5	23.0			finished primary school
2.3	0.0	0.0	0.0	0.0	1.2	77.9	8.1	9.3	15.1			finished preparatory school
3.5	0.3	0.2	0.2	0.2	0.8	65.8	11.3	14.9	24.4			finished secondary school/above medium education
1.5	0.2	0.6	0.6	0.0	3.0	65.3	14.7	14.9	28.2			University education/higher
												Work Status

2.7	0.1	0.4	0.4	0.0	1.7	66.7	13.4	14.2	24.0	Currently employed
3.4	0.3	0.4	0.4	0.3	1.5	66.6	10.0	14.6	25.6	Currently not employed
3.0	0.2	0.4	0.4	0.1	1.6	66.7	11.8	14.4	24.8	Total
43	3	3	6	2	23	956	169	206	355	Number

There are some differences in accordance with the background characteristics. According to the place of residence, 30% of the respondents in urban areas said the proposed amendment was a good step towards establishing a civil state while 63% saw the reasons behind the amendment's proposals as coming from pressure exercised by some non-Muslim intellectuals. Whereas in rural areas, such percentages were 16 % and 73 % respectively. According to religion, the differences were much clearer as 70% of Muslims said the reasons for amendments were pressures by some non-Muslim intellectuals to amend the article compared with only 21% of Christians agreed. Around 61% of the Christians said it is a good step towards the civil state compared with only 22 of Muslims. Moreover, some 38% of Christians noted that the amendment of Article II was considered a democratic principle of equality for all Egyptians compared with 13% of Muslims. There were also differences in accordance with education status given that 28% of respondents who received a university education or higher stated that the amendments were a good step towards the realization of a civil state compared with 15 % of the respondents who finished only preparatory school.

There were limited differences in accordance with gender, age and work status. Table 4-4 presents a distribution of the individuals 18 and older who heard about the amendment of Article II in accordance with individuals seeking amendment and their backgrounds. About 85 % of respondents noted that some Christians were demanding the amendment of Article II while 15 % mentioned "some seculars" and 12% said it was demanded by the people of other religions. Moreover, 11% of the respondents said some intellectuals are seeking such a change. It was noted that there were some differences in the backgrounds of the individuals. Individuals living in urban areas, males, younger ages, Muslims and highly-educated were mainly the greatest who mentioned that amendments of Article II of the constitution was sought by seculars. As expected, 11% of Christians said that seekers of the amendment were

Muslims compared with only 5% of Muslims. On the contrary, about 86 % of Muslims said that seekers of amendment to Article II were some Christians compared with 77% of the Christians. Individuals living in urban areas, males, younger ages, Christians, higher-educated and those who were employed were the greatest that referred to the seekers of amending Article II as being some intellectuals.

Table 4-4 Seekers of Amending Article II										
The relative distribution of individuals at the age of 18 and above who heard about Article II of the constitution according to the individuals seeking the amendment of Article II of the Constitution and some background characteristics, opinion survey on the Constitution 2011.										
Do not know	Others	foreigners	Parties in the country	Liberals	Seculars	People of other religions	Some Christians	Some Muslims	Some intellectuals	Background Characteristics
										Place of Residence
3.4	0.4	0.3	0.3	6.4	16.8	14.6	83.1	6.7	11.8	Urban areas
2.8	1.3	0.6	0.6	6.5	12.4	8.5	89.1	3.5	9.2	Rural areas
										Gender
3.0	0.6	0.1	0.1	6.8	16.0	12.1	84.8	5.5	12.0	Male
3.3	1.0	0.8	0.8	5.8	14.0	12.5	86.2	5.5	9.2	Female
										Age
3.6	1.2	1.2	1.2	9.0	16.8	13.8	86.8	4.2	7.8	18-22
3.9	0.4	0.0	0.0	10.1	17.4	9.7	86.0	3.9	11.6	23-29
2.0	0.7	0.7	0.7	5.1	14.4	9.5	86.6	6.4	10.3	30-39
3.6	0.7	0.4	0.4	4.7	12.9	11.1	86.7	6.1	10.4	40-49
3.2	1.6	0.0	0.0	5.8	18.9	16.8	78.4	4.7	14.2	50-59
3.8	0.0	0.0	0.0	4.6	9.9	19.8	85.5	7.6	10.7	+60
										Religion
3.1	0.7	0.4	0.4	6.7	15.9	12.5	85.9	5.1	8.5	Muslim

	3.1	2.1	1.0	1.0	2.1	5.2	9.3	77.3	11.3	43.3	Christian
											Education Status
	5.3	0.8	0.0	0.0	3.0	7.6	11.4	87.9	6.1	6.8	Never gone to school
	3.8	0.0	0.0	0.0	0.0	13.5	11.5	86.5	3.8	5.8	Never finished primary school
	5.4	0.0	1.4	1.4	2.7	9.5	5.4	86.5	2.7	5.4	finished primary school
	4.7	1.2	0.0	0.0	3.5	11.6	8.1	88.4	7.0	3.5	finished preparatory school
	2.9	1.4	0.5	0.5	6.5	14.2	12.9	84.3	5.0	12.1	finished secondary school/above medium education
	2.2	0.0	0.4	0.4	9.1	20.3	13.6	85.1	6.5	12.9	University education/higher
											Work Status
	2.4	0.7	0.1	0.1	5.8	15.6	11.4	85.9	5.3	12.7	Currently employed
	4.0	0.9	0.7	0.7	7.1	14.6	13.2	84.7	5.7	8.7	Currently not employed
	3.1	0.8	0.4	0.4	6.4	15.1	12.3	85.4	5.5	10.8	Total
	45	11	6	6	92	217	176	1224	79	155	Number

4-2 Tendencies Towards Article II of the Constitution

Tendency to Keep Article II of the Constitution

Table 4-5 presents the relative distribution of individuals at 18 and above who were the most supportive of Article II of the Constitution according to the reasons of its preservation and some background characteristics. The data refers that the percentage of supporters for keeping Article II is 88% of the respondents. The ratio of supporters to keeping this article is high among various respondents except the Christians (only 7% of the supporters to maintaining Article II of the Constitution). The supporters were questioned over maintaining Article II

concerning their reasons for supporting such an article. About 92% of the supporters said they were supportive of the Islamic religion as the main religion of the state while 43% of respondents said they were in favor of Islamic sharī'ah governing all Egyptians. Meanwhile about 12% of respondents said they supported the presence of the article because of the gravity of tampering with it whereas 9% said they supported the establishment of a religious and non-civil state. There were differences in accordance with the background characteristics of the respondents. For example, about 17% of the respondents with a university education or higher said they were supporting Article II to remain as it was because of the gravity implied by any infringement of it while only 5% of the respondents who had not finished their primary education saw things the same. Also, 45% of urban respondents said they felt that the article should be kept until the Islamic *sharī'ah* would govern all Egyptians compared with 39% of rural respondents. Taking into consideration the low number of Christians in the sample who preferred the article to remain, the table shows that 60% of Christian respondents agreed that the article be maintained in order to keep the Islamic religion as the main religion of the state.

Table 4-5 Tendency towards Keeping Article II of the Constitution:										
The relative distribution of individuals at the age of 18 and above who are approving the perseverance of Article II of the Constitution according to the reasons for keeping it and some background characteristics, opinion survey on the Constitution in 2011.										
	total	Because the Arabic language is the main language of the state	To avoid sectarian sedition	Because of the seriousness of infringing such article	Because I support the Islamic Sharī'ah to govern all Egyptians	Because I support the religious rule, not the civilian	Keeping the Islamic religion as the main religion of the state	Supporters to the perseverance of Article II		
								Number	Ratio	Background Characteristics
										Place of Residence
	1411	0.1	0.4	14.4	45.0	9.3	89.1	1622	87.0	Urban areas
	948	0.2	0.5	9.1	38.8	8.6	95.1	1052	90.1	Rural areas
										Gender
	1325	0.2	0.3	12.1	41.8	9.7	92.0	1500	88.3	Male

1034	0.1	0.6	12.5	43.4	8.1	90.9	1174	88.1	Female
									Age
267	0.0	0.7	14.6	39.0	8.2	91.0	295	90.5	18-22
421	0.0	0.5	8.8	41.6	7.6	89.8	462	91.1	23-29
618	0.5	0.2	12.8	47.4	10.7	90.6	710	87.0	30-39
472	0.0	0.4	10.8	41.0	9.1	91.9	541	87.2	40-49
316	0.0	0.9	16.8	44.0	9.2	92.7	362	87.3	50-59
265	0.0	0.0	11.3	37.0	7.9	94.7	304	87.2	+60
									Religion
2349	0.1	0.3	12.1	42.6	9.1	91.7	2524	93.1	Muslim
10	0.0	20.0	40.0	10.0	0.0	60.0	150	6.7	Christian
									Education Status
322	0.0	0.6	9.9	31.4	5.9	92.5	372	86.6	Never gone to school
123	0.8	0.0	4.9	35.0	6.5	94.3	134	91.8	Never finished primary school
153	0.0	0.7	11.8	32.7	13.1	94.1	167	91.6	finished primary school
147	0.0	0.0	11.6	39.5	8.8	88.4	162	90.7	finished preparatory school
974	0.0	0.4	11.0	44.0	10.0	90.6	1119	87.0	finished secondary school/above medium education
640	0.3	0.5	17.0	50.3	8.8	91.9	720	88.9	University education/higher
									Work Status
1155	0.2	0.5	11.5	45.4	9.6	91.6	1322	87.4	Currently employed
1204	0.1	0.3	13.0	39.7	8.5	91.4	1352	89.1	Currently not employed
2359	0.1	0.4	12.3	42.5	9.0	91.5	2674	88.2	Total
--	3	10	289	1002	213	2158	--	--	Number

								Age	
2	0.0	50.0	100.0	0.0	295	0.7	18-22		
11	0.0	54.5	54.5	36.4	462	2.4	23-29		
10	0.0	30.0	10.0	90.0	710	1.4	30-39		
7	0.0	42.9	57.1	71.4	541	1.3	40-49		
7	0.0	85.7	28.6	57.1	362	1.9	50-59		
11	9.1	36.4	54.5	72.7	304	3.6	+60		
								Religion	
9	0.0	55.6	33.3	55.6	2524	0.4	Muslim		
39	2.6	46.2	46.2	64.1	150	26.0	Christian		
								Education Status	
11	0.0	45.5	36.4	63.6	372	3.0	Never gone to school		
0	0.0	0.0	0.0	0.0	134	0.0	Never finished primary school		
1	0.0	100.0	0.0	0.0	167	0.6	finished primary school		
5	0.0	40.0	20.0	80.0	162	3.1	finished preparatory school		
16	0.0	68.8	43.8	56.3	1119	1.4	finished secondary school/above medium education		
15	6.7	26.7	60.0	66.7	720	2.1	University education/higher		
								Work Status	
27	3.7	51.9	48.1	59.3	1322	2.0	Currently employed		
21	0.0	42.9	38.1	66.7	1352	1.6	Currently not employed		
48	2.1	47.9	43.8	62.5	2674	1.8	Total		
--	1	23	21	30	--	--	Number		

Tendency to Amend Article II of the Constitution

Table 4-7 presents the viewpoints of individuals 18 years old and above who support the amendment of Article II of the Constitution in accordance with the reasons which pushed them in that direction. The table shows that only 6% of the respondents support the amendment of the article. Christians were most supportive of such an amendment. About three-quarters of

the respondents supporting the amendment of Article II pointed out that they believed that amendment would guarantee freedom of religious belief, that every individual should be tried according to the rules of his religion and that there should be equality among Muslims and Christians while 17% of the respondents approving the amendment felt that amendment would establish a civil state.

Table 4-7 Reasons for Tending to Amendment									
The relative distribution of individuals at the age of 18 and above supporting the amendment of Article II of the constitution, according to the reasons for tending to amendment and the background characteristics, opinion survey on the constitution, 2011.									
Total	To allow building churches	To establish a civil state	Because if the country becomes an Islamic state, there will be a problem	To calm down the category demanding a cancellation of the Article	The presence of freedom of belief/the individual should be tried according to his religion/to include a special text for the personal status of Christians/ presence of other religions/equality between Muslims and Christians	Supporters of amending the article		Background Characteristics	
						No.	Ratio		
									Place of Residence
122	0.8	18.9	3.3	4.1	73.8	1622	7.5		Urban areas
34	0.0	11.8	2.9	8.8	76.5	1052	3.2		Rural areas
									Gender
93	1.1	14.0	4.3	4.3	77.4	1500	6.2		Male
63	0.0	22.2	1.6	6.3	69.8	1174	5.4		Female
									Age
17	0.0	17.6	11.8	0.0	70.6	295	5.8		18-22
18	0.0	0.0	11.1	5.6	83.3	462	3.9		23-29
46	0.0	17.4	2.2	4.3	76.1	710	6.5		30-39
34	2.9	20.6	0.0	2.9	76.5	541	6.3		40-49

	24	0.0	20.8	0.0	12.5	66.7	362	6.6	50-59
	17	0.0	23.5	0.0	5.9	70.6	304	5.6	+60
									Religion
	71	0.0	19.7	7.0	8.5	66.2	2524	2.8	Muslim
	85	1.2	15.3	0.0	2.4	81.2	150	56.7	Christian
									Education Status
	11	0.0	9.1	0.0	0.0	90.9	372	3.0	Never gone to school
	5	0.0	100.0	0.0	0.0	0.0	134	3.7	Never finished primary school
	8	0.0	16.7	0.0	16.7	66.7	167	4.8	finished primary school
	9	0.0	33.3	11.1	0.0	55.6	162	5.6	finished preparatory school
	70	0.0	9.6	5.8	7.7	76.9	1119	6.3	finished secondary school/above medium education
	53	1.6	22.2	0.0	3.2	74.6	720	7.4	University education/higher
									Work Status
	81	1.2	16.0	1.2	3.7	79.0	1322	6.1	Currently employed
	75	0.0	18.7	5.3	6.7	69.3	1352	5.5	Not currently employed
	156	0.6	17.3	3.2	5.1	74.4	2674	5.8	Total
	--	1	27	5	8	116	--	--	Number

There were some differences in accordance with the background characteristics. The table shows that 83% of the respondents supporting the amendment of Article II, age 23-29 years old, believed that the amendment should realize freedom of religion, that every individual should be tried in accordance to his religion laws and that there should be equality among Muslims and Christians. This conviction was much less among the older-age categories (67%) of the respondents supporting the amendment of Article II who were 50-59 years old. The table shows that the conviction that the amendment of Article II could create a civil state

decreased among the younger age categories (about 17%) and increased at the older age categories (24%).

According to religion, the table points out that 81% of Christian respondents who supported the amendment of Article II believed that the amendment would realize freedom of the religion, that every individual should be tried according to his religion, and that there should be equality between Muslims and Christians while 66% of Muslim respondents believed in the same conviction. It is noteworthy to mention that none of the Christians referred to the conviction that, if the state became an Islamic one, there would be a problem while 7% of Muslim respondents referred to such a problem.

Table 4-6 explains that there are differences according to education status, in the conviction that amendment of Article II could realize a freedom of the religious belief, that every individual should be tried according to his religion and that there could be equality between a Muslim and a Christian. About 91% of the respondents who never attended school were supportive of the amendment of Article II. This conviction was much lower among respondents who finished their primary and preparatory school education (67% and 56% respectively), then it once again to reach about 75% of the respondents who finished their university education and higher.

Table 4-8 presents the viewpoints of individuals 18 years and above who support Article II of the Constitution. The table shows that more than half of the respondents who support the amendment of Article II (58%) felt that amendment should equal rights between Muslims and Christians and that the state should become a civil state while one-fifth of the respondents approving of the amendment of Article II (19%) felt that amendment should be made through the addition of a paragraph (taking into consideration the personal status of non-Muslims) to Article II.

Regarding the background characteristics, there were some differences as we find that respondents in urban areas were much more convinced than those in rural areas that amendment of Article II should be made through devising equal laws between Muslims and Christians and that the state becomes a civil one (64% and 38% respectively). About 21% of the respondents in urban areas and 9% of rural respondents noted that the amendment should

be made through the addition of a paragraph (taking into consideration the personal status of non-Muslims) to Article II.

The table shows that three-quarters of the respondents (77%) supporting the amendment of Article II, age category of 18-22 years-old, said that amendment should be made through devising equal laws for Muslims and Christians and that the state should become a civil one. Agreement on this way of amending Article II gradually decreased among the age categories (53% among the age group 60 years and above). On the contrary, the table notes that support for the amendment through the addition of a paragraph (taking into consideration the personal status of non-Muslims) to Article II increased in older age categories (35% among the age group of 60 years and above) and decreased among those younger (13% among the age category 30-39).

Table 4-8 Viewpoint Over How to Make the Amendment					
The relative distribution of individuals at the age of 18 and above supporting the amendment of Article II of the Constitution according to their viewpoints over how to make the amendment, according to the background characteristics, opinion survey on the Constitution 2011.					
	Do not know	Equal laws for Muslims and Christians and the state becomes civil	Addition of a paragraph (taking into consideration the personal status of non-Muslims)	<i>Sharī'ah</i> is a source of legislation	Background Characteristics
					Place of Residence
	12.3	63.9	21.3	2.5	Urban areas
	52.9	38.2	8.8	0.0	Rural areas
					Gender
	20.4	62.4	15.1	2.2	Male
	22.2	52.4	23.8	1.6	Female
					Age
	23.5	76.5	0.0	0.0	18-22
	16.7	61.1	22.2	0.0	23-29

	28.3	54.3	13.0	4.3	30-39	
	20.6	58.8	20.6	0.0	40-49	
	16.7	54.2	25.0	4.2	50-59	
	11.8	52.9	35.3	0.0	+60	
					Religion	
	25.4	59.2	14.1	1.4	Muslim	
	17.6	57.6	22.4	2.4	Christian	
					Education Status	
	27.3	54.5	18.2	0.0	Never gone to school	
	0.0	80.0	20.0	0.0	Never finished primary school	
	50.0	37.5	12.5	0.0	finished primary school	
	33.3	66.7	0.0	0.0	finished preparatory school	
	21.4	58.6	17.1	2.9	finished secondary school/above medium education	
	15.1	58.5	24.5	1.9	University education/higher	
					Work Status	
	18.5	58.0	19.8	3.7	Currently employed	
	24.0	58.7	17.3	0.0	Not currently employed	
	21.2	58.3	18.6	1.9	Total	
	33	29	29	3	Number	

The table also refers to more than half of the respondents whether Muslim or Christian who stated that amendment of Article II should be made by legislating equality between Muslims and Christians and that the state should become a civil one. It was noted from the table that one-fifth of Christian respondents (22%) felt that amendment of Article II could be made through adding a paragraph (taking into consideration the personal status of non-Muslims) to Article II which currently exists in the constitution and around 14% of Muslim respondents supported this opinion.

Conclusion

The study depended on a quantitative approach to collecting data. It used a poll design containing a number of questions which aimed at getting acquainted with the opinions of the public concerning the constitution and the various articles that should be amended, especially Article II in an effort to reach a format proposed by the various segments of society through a sample representing the Egyptian governorates (urban, Lower and Upper). The targeted sample for conducting such an opinion survey on the constitution was to interview 5,000 persons of 18 years old and above. To ensure that the sample was representative of reality, a sample was selected from the health population survey of 2008. That survey had been conducted by Al-Zanāṭī Office and his associates all across the ARE and all Egyptian governorates were represented according to the Egypt population census conducted in 2006.

The Arab Republic of Egypt governorates were divided into four administrative divisions: urban governorates, Lower Egypt governorates, Upper Egypt governorates and border governorates. The sample was randomly chosen to include two urban governorates and four governorates each from Lower Egypt and Upper Egypt respectively while no border governorates were selected. Consequently, the number of selected governorates to conduct the survey was ten. The sample survey was distributed to the governorates in accordance with the population distribution in the governorates and the distribution of urban and rural areas in the Lower and Upper Egypt governorates. Hence, as many as 184 sampling units were defined to be selected from the governorates so that each household included 60 families to be interviewed. Absences of some families and incomplete families were taken into consideration and that is why the number of families to be interviewed was increased by 10% bringing to 5,520 the number of families in the sample survey which were distributed throughout the ten governorates. As many as 5,179 families were successfully interviewed and this number represents a 94% response rate. One-quarter of the respondents who were interviewed were between 30 to 39 years old, while only one-tenth of the respondents were between 18 to 22 years-old. Also, we find that only two-fifths of the respondents were employed while three-fifths of the respondents were currently unemployed. The results of the study showed that the respondents who were interviewed and had never had education were double the number of respondents interviewed and had a high school or university education.

The following is a summary of the most important results and recommendations

5-1 Citizens' Viewpoints About the Constitution

- The study explained that three-quarters of the respondents had heard about the constitution. The ratio of respondents was higher in urban areas or among people with a university education or higher while it was the lower in rural areas and among those who had not never attended school.
- About 64% of the respondents pointed out that the constitution were the laws governing the state while only 5% said it was regulations and laws between the people and groups in society. Moreover, 5% said that all that they knew about the constitution was the recent constitutional amendment while 3% mentioned incorrect concepts concerning the constitution. About 17% of respondents did not know the nature of information about the constitution.
- A vast majority of the respondents heard about the constitution from television. There was not any clear impact by the remaining sources of knowledge about the constitution.
- The study showed respondents in urban areas that heard about the constitution through newspapers and magazines were double the number of respondents in rural areas. Also, respondents with a university education or higher were much more than respondents with lower education levels. The ratio of persons who heard about the constitution through the internet in the younger categories was a high one while this ratio was lower among older age categories.
- About two-thirds of the respondents pointed out that they had participated in the recent referendum over constitutional amendment. Participation among males was much higher than females (72% compared with 54%) and among Christians was higher than Muslims (74% compared with 63%) as well as among those employed versus those unemployed (72% compared with 56%). Respondents with a university education or higher had high participation (77%) while the lowest participation was among respondents who had never attended school (51%). In general, younger respondents had been more involved in the referendum on the recent constitutional amendment.
- As for the reasons for participating in the referendum, two-fifths of respondents said they participated in order to realize stability in the country. About one-fifth of respondents said they participated due to the right to participate/express opinions . Less than one-fifth of the respondents said they participated due to their sense of democracy and fairness: “I am sure that my vote will be heard”.

- As for the reasons for not to participate in the referendum, two-fifths of the respondents said they had not participated because they were busy while less than one-fifth said that they were not able to vote (for health reasons) and one-tenth of said they were lazy/not interested.
- In general, four-fifths of respondents favored the recent constitutional amendment. The percentage of respondents, who took part in the referendum and approved the constitutional amendments, was much higher than those who did not participate and approved the amendments. As for persons who were influenced by others in defining their opinions, the percentage of respondents who approved the constitutional amendment and were influenced by their friends, colleagues and neighbors, was much higher than those who were influenced by some politicians. The percentage of the respondents who approved the amendment among Muslims was higher than among Christians.
- Considering the reasons for approving the constitutional amendment in general, more than two-thirds of the respondents approved the constitutional amendment believing that it could help in realizing the state's interests and stability. More than one-fifth of the respondents approved the constitutional amendment believing that it could lead to changing of some laws for the better. A few ratios of respondents who approved the amendment believed that the majority approved or that they had been subject to certain trends.
- As for the reasons for not approving the constitutional amendment, four-fifths of respondents said that the reason for their refusal was that the amendment was not a complete change of the constitution (a patchwork of the constitution). About 8% said the conditions of the state have not yet changed while 3% noted that the revolution had dropped the constitution and 2% stated that the reason for not approving the amendment was due to the inequality between Muslims and Christians (the state's prejudice against Christians).
- In general, more than one-tenth of the respondents pointed out that some articles of the constitution needed to be amended. The study showed that respondents who most mentioned that there were articles of the constitution that should be amended were urban people, Christians, those with a university education or higher while fewer respondents who mentioned articles of the constitution that should have been amended were those who lived in the rural areas, Muslims and those with lower education levels.

- The study showed viewpoints of respondents about some other articles that needed to be amended. More than half of the respondents felt the necessity of changing the constitution as a whole. About one-fifth of respondents mentioned that the article of the president's powers should be amended. A few percentages of the respondents agreed on canceling the emergency law, the labor law/statute for workers, the special article of amending presidential terms and special articles of the People's Assembly and Shūrā Council (the Upper House of the parliament) as well as Article II of the constitution.
- Concerning the priority of changing the constitution or holding People's Assembly elections, the study showed that respondents felt that there was a priority to change the constitution followed in importance by holding People's Assembly elections (29% compared to 21%). It is noteworthy to mention that Christians were most prominent referring to the outlining of the constitution first more than Muslims (48% compared with 28%) while Muslims were most prominent referring to the priority of holding PA elections more than Christians (22% compared with 11%).
- The ratio of supporters to changing the constitution first was higher in urban areas than in rural ones (32% and 25% respectively) and higher among males than females (31% and 26% respectively). Moreover, the ratio was higher among younger respondent categories and among higher-educated individuals. Also, the ratio was higher among Christians than Muslims (46% and 28% respectively) and among those employed than those unemployed (33% and 26 % respectively).
- As regards the reasons for supporting the change of the constitution first, the main reason mentioned by four-fifths of respondents was that there should be proper laws applied before the elections in order to choose the members on correct bases. Moreover, one-fifth of the respondents mentioned that changing the constitution first could lead to stability of the country. A few percentages felt that changing the constitution first would impede attempts by any political power to manipulate the new constitution or any committees formed to outline it in such a way as to make it serve their own interests.
- The study showed that individuals in rural areas, older people, Muslims and the less-educated were the most supportive of changing the constitution first in order realize state stability. On the contrary, respondents who were from urban areas, Christians and the highly-educated were the most supportive of changing the constitution first because

there should be proper laws enacted before the elections in order to choose the People's Assembly members on a sound basis.

- The percentage of supporters to holding the People's Assembly elections first was higher in urban areas more than in rural ones (22% and 20% respectively) and higher among males than among females (24% and 18% respectively). Moreover, this percentage was much higher among respondents of younger age categories and among highly-educated individuals. Also, the percentage was much higher among those employed than among those unemployed (25% and 19% respectively).
- As regards the reasons for the priority of holding People's Assembly elections, three-fifths of the respondents mentioned that the PA will form the committees for formulating the constitution from trusted people and it would approve such a constitution. Also, almost one-third of the respondents believed that elections would lead to the country's stability and realize its interests.
- The study showed that individuals in the rural areas, older people, Christians and less-educated were the most supportive of holding the PA elections in order to realize the country's interest and its stability. On the contrary, the respondents in urban areas, males, younger ages and highly educated were most supporting of holding the PA elections because People's Assembly would form the committees which would formulate the constitution from trusted people and would also approve the new constitution.

5-2 Citizens' Viewpoints about Article II of the Constitution

- The study noted that only one-third of the respondents had heard about Article II of the Constitution. The study also showed that the respondents who had heard most about Article II of the Constitution were urban people, males, younger ages, Christians, recipients of university education or higher and those who employed, while those who had heard less about Article II of the Constitution were from rural area, females, seniors, Muslims, lower educated levels and the unemployed.
- Two-thirds of those who agreed on the recent constitutional amendments as well as more than a half of those who participated in the referendum on the constitutional amendments had not heard about Article II of the Constitution.
- More than a half of the respondents pointed out that they had heard about the amendment of Article II of the Constitution. The respondents were urban people,

males, younger ages, the highly educated and those employed who had heard most about the amendment of Article II of the Constitution in comparison with their counterparts.

- The study referred to the viewpoints of respondents concerning the amendment proposals they had heard about. Almost two-fifths of the respondents had heard about canceling/annulling the whole article while a lower percentage of respondents noted that they had heard about canceling the paragraph of the Islamic *Sharī'ah* as the main source of legislation and the addition of a sentence that "all religions are free in the state" following the sentence that "Islam is the religion of the state" which would be amended to "the Islamic *sharī'ah* is one of the legislation sources". It is noteworthy to mention that Christians had been the most who heard about the addition of a sentence that "all religions are free in the state" after the sentence of "Islam is the religion of the state" and its amendment to the Islamic *sharī'ah* is one of the legislation sources.
- Regarding the reasons behind the amendment proposals, two-thirds of the respondents said that the reasons for the amendment proposals were pressures exerted by some non-Muslim intellectuals for amending it. One-quarter of the respondents said it was a good step towards a civil state while lower percentages of the respondents mentioned democratic principles including equality among all Egyptians along with pressures by some intellectuals to amend it.
- The study explained that those surveyed who mostly mentioned the amendment proposal "because it is a good step towards a civil state" were urban people, older ages, Christians, the highly educated and those currently unemployed. Those who mostly mentioned the amendment proposal "because democratic principles would guarantee equality among all Egyptians" were Christians and the highly educated. Those who viewed the amendment proposal as "pressure from some of non-Muslim intellectuals to be amended" were mostly from rural areas, younger ages and Muslims.
- The study showed that most of the respondents supported maintaining Article II of the constitution without any change. The ratio of supporters for keeping this article was high among various respondents except among Christians (only 7% supported keeping Article II of the Constitution).
- The reasons behind keeping this article: The most important reason mentioned by most of the supporters to keeping this article was "maintaining the Islamic religion as the state's religion" and the most supporters for this reason were rural people, older ages,

Muslims and the less educated. The second reason for support was "that Islamic *sharī'ah* (Islam religious rulings) should govern all Egyptians" and the most supporters of this reason were urban people, females, Muslims and the higher educated. The third reason for support was "the seriousness of tampering with such article" and the most supporters of this reason were urban people, older ages, Muslims and the higher educated.

- The ratio of the supporters to annul the article was only 2% of respondents. Christians were the most supporters of annulling of the article.
- The reasons behind the cancellation of this article: The most important reason mentioned by most supporters for the annulment of this article was "they want a civil state and not a religious one". Most of these supporters were urban people, females, older ages, Christians and the moderately educated. The second reason was that "this article differentiates between Muslim and non-Muslim Egyptians" and the supporters of this reason were mainly from rural areas, males, older ages and Muslims. The third reason for support was "that every Egyptian has the right to be tried according to the laws of his religion" and the most supporters for this reason were from rural areas, younger ages, Christians and the highly educated. The data should be cautiously taken because the number of supporters to the annulment of this article were only 48 respondents.
- The supporters of the amendment of the article were only 6% of the respondents. Christians are the most supportive of amendment of this article.
- Mentioned from about third-quarters of respondents was that they believed that amendment would bring about "freedom of religious belief, that every person would be tried according to his religion and equality between Muslims and Christians". The most supporters of this reason were males, younger ages, Christians and lesser educated. The second reason of support was "that the state could be civil state" and the most supporters of this reason were from urban areas, females, older ages, Muslims and the lesser educated. It is worth mentioning that none of the Christians referred to the belief that if the state has become Islamic, there could be a problem while 7% of the Muslims responding referred to such a problem.
- More than half of the respondents supporting the amendment of Article II of the constitution felt that amendment should be made through devising laws granting equality between Muslims and Christians and that the state should be a civil one. The

most supporters to this idea were from urban areas, males, younger ages and the moderately educated. Meanwhile one-fifth of supporters felt that the amendment should be made through the addition of a paragraph (taking into consideration the personal status of non-Muslims) to Article II. The most supporters of this idea were from urban areas, females, older ages, Christians and the highly educated.

Second: Testimonies Analysis

Title: Article II of the Constitution: Amendment for Time

Author: Usāmah Salāmah

(An author interested in citizen affairs and Editor-in-Chief of *Rose al-Yūsuf Magazine*)

With so much talk about the necessity of having a new constitution and in spite of the fact that the parliamentary elections would precede it according to the time-table set by the Military Council there is ongoing controversy concerning the Article II of the Constitution: canceling it or keeping it in the new constitution.

Egyptian society experienced many changes after the January 25th Revolution, foremost of which was the strong emergence of Salafists in the Egyptian political arena and their formulation of political parties. In addition, Islamic groups and members of the *Jihād* organization were released from prisons after being jailed for their involvement in the assassination of late President Anwar al-Sādāt, forming an armed organization which attempted to storm into Asyut Security Directorate and killing a number of officers and soldiers. Now they have formed political parties after getting out of prison constituting a new turning point in the Egyptian political life. There is also the presence of coalitions and parties of the revolutionary youth and the establishment of parties demanding a civil state. The emergence of Coptic politicians and the formation of the Maspero Youth Coalition which defends the rights of Coptic Christians are also additional developments.

All of these developments have encouraged us to carry out this important survey on the Article II with 200 figures belonging to eight various trends and entities. After reviewing the answers, we had these basic remarks.

We will examine the stance of every category regarding the Article II of the Egyptian constitution through the following table according to the recorded opinions:

Category	Supporters of keeping Article II	Supporters of canceling Article II	Remarks
Christian citizens	13	7	
Islamic movements	19	—	Only one said no with cancelling or keeping Article II
Media figures and artists	15	5	
Official religious institution	18	2	
Former parliamentarians	20	—	
Revolution youth	18	2	
Lawyers and judges	32	8	The survey result was 40 and no 20
Liberals and supporters of civil state	29	11	This category was 40 and not 20 as was the case with the rest
Total	163	36	+1 not with keeping or cancelling
Aggregate total	200		

Remarks:

1. The vast majority of participants in the survey preferred to keep the Article II of the Constitution by 163 participants against only 36 participants who preferred to cancel it.
2. Thirty-four participants of those wanting to cancel it believed that Egyptian society is not currently prepared to infringe on the article meaning that time is not convenient to cancel this article in the constitution. Hence, 34 participants could be added to the other 163 who agree to keep the article, thus the number would be 197 participants supporting the continuation of the article in the new constitution, even for a certain time, due to the seriousness of the abolition of this article for the time being, given that this would have a negative impact on the society rather than a positive one.
3. The two persons who said that time is opportune for abolishing Article II did not explain the insignificance of the cancelation except to mention that Egypt is a civil state without taking into consideration the reaction of the Islamic tends and public opinion in Egypt. The third person did not made himself clear regarding the cancelation or the keeping of Article II.

4. Eight of the 10 clergy participants in the survey were Christian clergymen belonging to the official institution and they supported keeping the article as the time was inappropriate to cancel it. Only two Christian clergymen belonging to the Evangelical Church believed in the necessity of canceling it as there is no civil state that includes religion in its constitution. A majority of Christian clergymen of the sample (5 Evangelical, 13 Orthodox and 2 Catholic) put the state's stability into consideration and believed in the importance of not disputing with Muslims. Moreover, clergymen of the Orthodox Church, which has a numerical majority in Egypt, did not see any serious damage in keeping the article provided the application of Christian law concerning personal status was guaranteed.
5. Ten clergymen participants in the survey were Muslims belonging to the official institution and they stressed the necessity of keeping Article II without tampering as it is part of the identity of the state and that this article has existed in all previous constitutions (given that the wording of the previous constitutions since 1923 was "Islam is the official religion of the state and Islamic *sharī'ah* is a main source of legislation". Then two letters "al" (the) were added to become "**the** main source" in the amendment introduced to the 1971 Constitution and repeated in 1981.
6. The Islamic political movements felt that any tampering with this article would not be acceptable. It was also noticed that in some movements, many members who spent long periods in prison such as members of Islamic groups and the *Jihād* (three participants of the sample) did not see the necessity of adding phrases to Article II that would guarantee Christians the ability to apply their law concerning personal status. All these movements did not see any negative implication with the existence of this article in the constitution and that its cancellation would deeply affect the society and that it would cause severe conflicts. Some of them felt that the West was behind the calls to cancel the article. Moreover, five participants in the survey, belonging to the *salafists*, believed that the article was practically not enforced and that its existence discouraged usury and encouraged the wheels of production. Laws often do not include deterrent penalties in contrast to the Islamic *sharī'ah*, if applied. It was also noted that the opinions included two *Shiite* participants who asked for adding the phrase of other laws to the article. The survey also entailed two from the Wasat Party, two from the Islamic group and two independents. One of those was Jamāl al-Bannā who said that he does not support or oppose Article II without specifying his stance.

7. A large number of Christians felt that an addendum related to applying Christian law to Christians concerning issues related to personal status, proposed by Coptic Orthodox Pope Shenouda III in his press interviews, was sufficient to reassure Copts. A large number of Christians, along with a large number of Muslims, supported the addition of other laws to include Jews and *Bahā'īs*, which means that most Christians felt “personal status” was the most important part of Article II.
8. The survey included two *Bahā'īs*, and both of them saw that there was no harm in keeping Article II with the condition that it applied to other laws concerning the personal status of non-Muslims along with ensuring freedom of worship, the building of houses of worship and maintaining global principles of human rights. This was because it is not the proper time for canceling the article completely.
9. Well over 99% of the participants agreed that the time was not appropriate for abolishing Article II and most of them felt there was a risk of provoking the Egyptian public by Islamic religious groups in case of cancelation.
10. Over 20 participants in the survey who refused the existence of the Article II were Muslims (according to their names) and the number was probably larger than that given that some names were ambiguous. This indicates the existence of a trend that refuses to keep of Article II given that it is against a civil state and deprives non-Muslims of their rights. It was also noted that most of the Christians covered by the sample were selected elite, whose number ranged between 13 and 20, supported keeping the article with the addition of phrases soothing to Christians.
11. Three artists participating in the survey supported the keeping of the article given that it does not cause any harm to society.
12. Out of the 40 participants, there were 29 liberals who advocated a civil state and keeping the article while only 11 participants wanted it to be canceled, including nine Muslims. All participants agreed that the society was not ready to cancel the Article II and felt the solution was to redraft it.
13. Most revolution youth supported keeping the Article II except only two persons. One was a Muslim and belonged to the Nāsserite mainstream while the other was a Christian belonging to the Maspero Youth Union. The opinions included six Christian revolutionists while most of Muslims felt that Article II articulated the Egyptian identity.
14. Fifty percent of participants felt that the negative implications of the article were manifested in its exploitation by some judges in issuing court rulings based on it although

it addresses the legislator and not the judge. This has resulted in the issuance of rulings not based on laws and some judges have exploited it in many personal status cases as a way of contradicting the Christian law in addition to slowing down the cases involving persons returning to Christianity. (Christians who converted to Islam, then returned again to Christianity who wished to alter their “religion” on their identity cards and the Civil Status Department refused to allow them to do so. They filed cases at the administrative court, but the court rejected their claims. However, the Supreme Administrative Court issued rulings in their favor. Other fears were represented in the extremist Islamic movements’ exploitation of this article. This contradicts the the concept of a civil state and imposes Islam on all Egyptians.

15. Only five participants (one of them Christian) stated that Article II has already existed in previous constitutions since the 1923 Constitution. They did not see that its presence caused any problems before that Article II stipulates that Islam is the religion of the state and that the Islamic *sharī’ah* is the principal source of legislation given the fact that “the” had been added to the text of the article when it was amended in 1980. It is noteworthy that three of the participants have called for returning the former text of the Article II included in the 1923 Constitution or other constitutions that followed it before the amendment of 1980. It means that the Islamic *sharī’ah* would be a main source of constitutional law and therefore there could be laws for other religions. One of the participants (a Christian) stated that France’s constitution includes that it is a Christian state.
16. Secular Copts were the most who have been rejecting Article II compared with Christian clergymen. This may be due to reservations latter have because of their religious positions whereas seculars are more liberal and independent. In addition, Evangelical clergymen are the most who rejected this article rather than Orthodox or Catholic clergymen according to what mentioned in the opinions.
17. At least 10 participants felt that the Azhar document was an important solution that could assure Copts especially when it calls for application of non-Muslim laws for followers concerning personal status.
18. All who required assurances have not opted for an addition to the article. All of them stated that other religions should be govered by their own laws concerning personal status or there should be the addition of a civil state sentence or that the sentence of *sharī’ah objectives* should be an alternative to *sharī’ah principles* as a solution or adding an article

about the meaning of *sharī'ah* principles which are justice, fairness and equality. This article should be address the legislator and not the judge. Some people have relied on the opinion of Pope Shenouda III in adding that Christian laws should judge Christians in their personal affairs.

19. No one tackled the reason for adding an article except for three participants in the poll. They felt that former President Anwar al-Sādāt had used this article for political purposes including the ratification of an article that gave the right to the president of the republic to be nominated for additional presidential terms instead of the article which had stipulated that the president had no right to be nominated for presidency after finishing two terms in office. They also mentioned that the reason for this was that Sādāt tried to manipulate the Islamic movements.
20. No one mentioned that they had already read the article. It seems from the answers of the participants that they had heard debates held concerning the article or read about it, but they had not read the article itself.

Conclusion:

No is not the appropriate time for canceling Article II. The best solution for this dilemma is to alleviate the fears of the Christians and those calling for the establishment of a civil state through a set of proposals as follows:

- 1.The addition of a paragraph affirming the right of non-Muslims to resort to their laws concerning personal status affairs and one of the prominent figures who suggested such proposal was Pope Shenouda III. This proposal has a weakness in that it is only tackles personal status situations.
- 2.The addition of a paragraph affirming the civil state and citizenship. This proposal has a shortcoming as there is already an article about citizenship preceding Article II.
- 3.The addition of a paragraph stressing that the article addresses legislators and not judges. This proposal has a shortcoming as it does not solve the problem of overlapping in personal status situations of non-Muslims in some cases. Also, it could sometimes cause a legal void that a judge could interpret according to his personal opinions.
- 4.The addition of an article following Article II should include the following:
 - The objectives of the Islamic *sharī'ah* are to realize fairness, justice and equality among citizens.

- The article is addressed to legislators. Judges have no right to use it in rulings. The judge, when there is a conflict of law, could refer the cause to the Supreme Constitutional Court.
- Non-Muslims should be judged according to their laws in the personal status situations.

The fourth proposal is currently the most suitable as it does not leave any loopholes that could be unjustly utilized by anyone. Also, this proposal could keep the article as it is without any changes as the society is not prepared for its cancelation.

Third: Roundtables

Arab West Report, October 23, 2011

Title: Article II Roundtable: Clerics, Media, and Civil Society

Author: Jayson Casper

On September 28, 2011, the Center for Intercultural Dialogue and Translation (CIDT) hosted three roundtable discussions concerning the Article II of the former Egyptian Constitution. Following the revolution, the status of Article II has been a subject of great debate as it served to great degree to define the identity of the Egyptian state. It reads: *Islam is the religion of the state, Arabic is its official language and the principles of Islamic law are the main source of legislation.*

Hānī Labīb, CIDT's Managing Director, moderated the discussions which were held at the headquarters of the Association for Upper Egypt in downtown Cairo.

Labīb provided an identical introduction to each of the three groups. He stated clearly that CIDT does not take an official position on Article II. Yet given that this article has become a point of contention among groups who wish it to remain as it is, to be amended, or to be removed altogether, Labīb asked each participant to provide answers to three questions:

1. Do you wish the article to remain in the constitution?
2. Do you believe the article is in need of amendment?
3. What is the proper formulation for Egyptian society?

Not all participants answered these questions clearly, yet most provided insights to illuminate the discussion and did not shy away from controversy. Summaries of their responses are below.

The Clerics' Roundtable

Fr. Raphael Tharwat, a Coptic Orthodox priest, opened the discussion by stating that Article II provided peace and security to Egypt. Nevertheless, recognizing that the 40% of the population is illiterate he stated that clerics from both religions should interpret the article correctly for the people. This would help assure them that the government is for the nation and not for any particular part of it. In accordance with this, he desired assurances that judges would not be able to use Article II so as to change the law as they see fit. One particular area of concern – worthy of amending in the article – is that non-Muslims are guaranteed to be ruled by their own religious laws. This would help ensure the principles of citizenship and prevent any possible loss of rights on the basis of Article II.

Fr. Philopater Jamīl, a Coptic Orthodox priest and leader in the Maspero Youth Union, followed by stating the worthiness of some of these points, but found that the emergence of more radical Islamic groups necessitated the cancelation of Article II, keeping the constitution from having any religious reference. He stated he had proof, for example, that judges have used Article II to protect Muslims following crimes against Copts, as *sharī'ah*, he maintained, does not allow execution of a Muslim for the killing of a non-Muslim. He fears also the article could be used to impose *Jizyah* (a tax on non-Muslims), as well as support accusations of *takfīr* (calling someone an infidel). Article II would be improved if it contained a clause to allow non-Muslims recourse to their own religious law, but this would only solve some of the issues, so it would be best to remove the article altogether.

‘Abd al-Fatāh ‘Askar, an Islamic writer and apologist, offered a completely different understanding of the Egyptian religious scene. He said there is only one religious community – Muslims and Christians together – for they are all monotheists and Egyptians. Anyone who harms a Copt harms God Himself, for in his eyes the value of a Copt is more than the value of, say, a Pakistani Muslim. The Islamic liberal system is the best the world has ever known for protecting human freedom – even that of an atheist – but some have corrupted it by following men, such as the un-Islamic *salafīs*. There is no problem with Article II, for a Muslim is a Christian and a Christian is a Muslim, but there are problems with the people and cultured

Egyptians must educate better about true religion. All the same, he favors the amendment of the article to include a clause mentioning also the Gospel and the Torah.

Muhammad Muhammad ‘Abdu is a professor of *sharī‘ah* and law from the Azhar University, and finds that Article II is a guarantee for Copts as well as for Muslims, and should stay as it is. He agrees that Copts and Muslims have always lived closely together in one country and that problems lie with the people, not the article itself. As for those who fear the article, he says it refers only to the broad principles of the law, protects diversity, and cannot be applied to laws in particular. Keeping a religious reference, on the other hand, prevents Egypt from going the way of Europe in adopting secularism with the resulting change in society: people must always be faithful to something.

Fr. Antonious ‘Azīz is a Coptic Catholic priest who is against any reference to religion in the constitution, even in personal status laws. He stated that Spain is assumed to be a Catholic nation, but it allows homosexuality and that the church has no role in legislation, but rather supports human freedom. Consider the *Bahā’ī* or the atheist, he said. Shall a religion legislate against these? No, religion should not have a dominating role in any state. It is not needed for everyone has a conscience.

Muhammad Hajjāj, a lawyer, like others looked to history and proclaimed that Muslims and Copts have cooperated in order to secure a state of justice. Problems that have existed recently, he claimed, were sown by the former regime. The constitution is meant to speak to broad principles, not details. As a sequential document he wondered why there was a problem. Article I establishes Egypt first and foremost as a democratic republic built on citizenship, and only then does Article II build on this foundation. Further articles also establish equality between citizens and protect the right of religious practice. If anything, the article should be amended to remove the word “principles” since such a word is dependent upon interpretation.

Usāmah al-Qūsī is a doctor and *salafī* preacher of Islam and also believes the former regime’s corruption, oppression and lack of transparency has hurt the national fabric. Ibn Taymīyah for one praised the just government, even if it was not Muslim. Furthermore, if we say there is no compulsion in religion, how can we judge someone by a religion not their own? As such, this is present in Article II, which would not differ if we amended it to say “all heavenly religions” for example. Each religious community should be able to govern itself by its own laws under the system of a general law for the nation.

Rev. Rif’at Fikrī is an evangelical pastor in Shubrā, who finds no civilized country in the world which puts religion in the forefront of its constitution. Secularism is needed, which is not that

people leave God, but that all are treated equally regardless of religion. In 1923, the constitution did establish Islam as the state religion, but it made no mention of *sharī'ah* until the “believer president” Sadāt inserted it and people have been dealing with sectarian conflict ever since. He agrees that Egyptian society is not ready to cancel Article II, but it should be amended to say: “Islam is the religion of the majority of the population. Arabic is the official language of the country. Principles of all religions’ *sharī'ahs* and international treaties for human rights are the principal sources for legislation.”

Media Roundtable

Sayyīd Shu'ayb, a journalist, stated he was against Article II, since the constitution does not represent the majority, but the entire country. The sanctity of belief must be protected and as such the constitution should be free of religious bias. For those who believe the article protects the Islamic identity of the state, he recommended the identity of Egypt is more properly grounded in that it protects the rights of all people equally.

‘Alā’ ‘Azmī, a journalist, is also in favor of removing Article II from the Constitution since he recognized a large part of the problem lies in that the general population does not understand the terms of debate. Therefore, the article should be dropped, an education campaign launched and then a general societal debate should take place without calling one group religious and the other infidels. Currently, Article II not only harms Copts, but Copts and Muslims together.

Wafā’ Wasfī, a journalist, is against Article II since it in effect cancels the state in favor of religion. Noting that Egypt is a religious society, she finds its people can sometimes run behind ideas rashly without sufficient thought. As such, society should move gradually in accord with what people can accept. This way, decisions made now might also be acceptable fifty years from now.

Bashīr ‘Abd al-Rāziq, an editor, believes that Article II is acceptable, but not in the way it currently is used by different groups for different interpretations. It must either evolve into something that all – Muslims, Christians, and Jews – can agree on together or else it should be dropped entirely.

Robeir al-Fāris, a journalist, is against the merger of religion and state, but finds that as the majority of the population is illiterate, this means democracy will be the rule of them over the rest, which is dangerous. As such, he is not against canceling Article II, but it must be done in the right way. First steps include removing the religious reference from the ID card and then

from education so students do not receive religious orientations. Only then will society be prepared to accept cancelation of this article.

Sayīd Tawfīq, a journalist, is in favor of keeping Article II since the problem is not in the text, but in its application. Nevertheless, it should be amended to better guarantee the rights of Copts. A major problem lies in the fact that the governments of the region have always played with religion as politics is a part of Islam, and who can reject Islam? Many people have reservations against the article, he believes, but will be afraid to speak up out of deference to the will of the majority.

Remon Edwards, a journalist, supports canceling the Article II, but believes reform in education and the media is necessary first. There should be no religious reference in the constitution, but the liberal parties who espouse such a position generally do not conduct activities in the street, so the message does not reach the majority poor.

Hassan Yahyá, a journalist, finds that there is no value in Article II, since every group interprets it according to their own understanding. Religious questions, he finds, have only mattered in the last several decades, forced upon the region by Israel as a Jewish state. Currently, it is *salafī* groups causing problems, especially as they circulate a treatise called ‘The Curse of the Groups of the Coptic Nation’, which accuses Pope Shenouda of seeking to create an independent Coptic state.

Finally, Ibtisām al-Jindī and Shaymā’ al-Shawarbī, both journalists, are in favor of amending Article II. Al-Jindī believes it is biased against the Copts, but if it is amended to include a guarantee for Coptic rights then it can remain. Al-Shawarbī meanwhile thinks it should be amended to make *sharī’ah* “a” source of legislation only and not the primary one. She adds that, if this article were to assist the ascent of the Muslim Brotherhood to power, she would be in favor of its cancelation.

Civil Society Roundtable

Dr. Nabīl Ahmad Hilmī, professor of international law and former Dean of the Faculty of Law, al-Zaqāzīq University, believes that Egypt has always had a civil government, but that following the revolution Islamist and extremist voices emerged to frame the discussion that liberals are trying to turn Egypt into a civil government. A state does not have a religion, though a majority may. For this latter reason, even though he wants to keep religion from the state, it will be impossible to remove the article. The best that can be done is to amend it.

Imād Felix, a lawyer, weighed in saying that it is not improper to have the principles of Islamic *Sharī'ah* as a source of legislation. The difficulty comes in making sure these principles do not harm the members of other religious communities. It is essential in the coming period to make sure the religion of the majority does not control or influence the minority populations.

Samyah 'Arīshah, a writer, stated she was afraid of the future in what might be done through Article II, agreeing that it would be difficult to remove and harder still to speak about this with the groups that play with religion. The question is how to amend it. Can it respect the confession of Islam as the religion of the minority while protecting individual freedom? Can each religious community be granted to rule by its own *sharī'ah*? Regardless, anyone who threatens a person outside of his own group's *sharī'ah* must be tried in a civil court.

Dr. Irīnī Thābit, professor of languages at Ain Shams University, for example, questioned if the discussion concerning principles of *sharī'ah* was in terms of popular understanding or legal. She asked furthermore if Islamic *sharī'ah* addressed both Muslim and Christian concerns. Hilmī, acting as a moderator, answered yes to the latter question, saying there is no compulsion in religion and Christians are free to govern themselves in religious matters. He added as well he was upset with the Jews who left Egypt for then the nation would have even more diversity. Mahmūd al-Khayyāl, a doctor, also was not sure of the parameters of the discussion, asking if interest was in the opinions about Article II or what was best to do with it in the future. He stated though born a Muslim he is an agnostic and is against Article II, even if amended to let other groups work according to their religious laws. What would be the outcome, he wondered – 4,000 religions needing to be written into the constitution? Furthermore, resting on the “principles” of *sharī'ah* does not help either, for principles can change also – look at Afghanistan. No, the article should be cancelled altogether.

Munīr Mujāhid, an engineer, agreed that Article II should be canceled since the constitution is a proscriptive document, not a descriptive one. Therefore, if remaining, it allows a judge to rule not just based on the law and constitution, but also on his particular interpretation of *sharī'ah*. Besides the law, the article will also lead to making education religious as well. These factors will push Egypt in the direction of becoming a sectarian country, which is a shame, since Article II was scripted in bad form for worldly reasons based on politics.

Tharwat Kharabālī, a lawyer, spoke from an Islamist perspective, having been a Muslim Brother and active in the Wasat Party. He agreed there was a danger from extremist religious perspectives, saying there was no place for *Wahabism* in Egypt. *Salafism* does not help either, since during the era of the Prophet and Companions, whom they imitate, there were liberals

and extremists also. The Constitutional Court must prevent such developments. He found Erdogan of Turkey to be an example, for during a conference he attended he addressed the concerns of his city, Istanbul, while others pontificated about Islam. Article II is important and should remain in the constitution, but it should be amended to define Egypt as a secular state with an Eastern understanding.

Midhat Bishāy, a writer, agreed about the power of the Islamist movements who speak loudly against liberals making the country secular to the level of rhetoric that they will die as martyrs to prevent this. Given the backwardness that exists in Egypt, great care must be taken. This is in light of the desire to bequeath a good nation to our children, requiring wisdom for the moment.

Felix spoke again, wondering if the solution would be to amend the article so as to include respect for international agreements. But he also believed the media would not be helpful as so many people would require knowledge and definition of what these agreements are. Nabīl Ahmad Hilmī closed believing the fear expressed was not completely necessary, for the military will never allow extremist movements to rule Egypt. The army, he stated, wishes to rule in accord with Egypt's nature as a country, but unfortunately, 99% of the population is not able or engaged to have a discussion on the topic as we are doing today.

Fourth: Legal Study:

Title: Dilemma of Article II of the Egyptian Constitution

Author: Dr. Nabīl Ahmad Hilmī, professor of international law, former dean of faculty of Law in Al-Zaqāzīq University and member of the National Council for Human Rights (NCHR)

Introduction and Defintions

The Constitution

The Egyptian Constitution was approved in the referendum of 1970 and then amended in 1980, 2005, 2007 and finally in 2011 following the referendum called for by the Supreme Council of the Armed Forces (SCAF) for the amendment of the constitution.

The Military Council assigned a committee with the task of introducing a number of constitutional amendments that were submitted to the people in the referandum of March 19,

2011. In that referendum, held under full judicial supervision, the Egyptian people approved the amendments introduced to the 1971 Constitution.

Following the referendum, the Military Council issued on March 30, 2011, a constitutional declaration consisting of 63 articles including most of amendments approved in the referendum of 19 March 2011. Egypt is still witnessing a debate on whether it would have been better to hold parliamentary elections or was it better to enact a draft law on the Constituent Assembly of 2011 for drafting the permanent constitution first.

The Constitution is the supreme law defining the basic character of the state (simple or complex) and the type of political regime (monarchical or republican) and the type of the government (presidential or parliamentary) and it organizes public authorities in terms of formation, competencies and the relation between these authorities, the limits of each authority and the rights and duties of individuals and groups.

The constitution specifies the competencies of the three authorities: the legislative, the judicial, and the executive and all lower laws in the legislative hierarchy adhere to the constitution. Laws and regulations become illegitimate in case they contradict a constitutional provision included in the constitution.

Constitution definition:

The term 'constitution' (comes from the Persian word of “*dustūr*”, it is a compound word: 'dust' meaning the rule and 'ūr' meaning the one who put the substance or material of which rules and laws are inspired and pursued by the state in solving all sorts of issues).

Thus the word “*dustūr*” is not Arabic in origin and was not mentioned in old Arabic dictionaries so some think that this word is likely of Persian origin and was introduced to the Arabic language through Turkish. It means establishing, forming or discipline.

Constitution is that laid down by deputies of the parliament and thus some countries, especially the Arab ones, do not have a good constitution safeguarding the rights of all citizens and thus we do not know whether the state of Arab Egypt is an Islamic, a civil or a military state due to the existence of the Article II which violates international conventions and the human rights. It

is thus a religious state, yet we adhere in forums to its being a civil state while it is close to being a religious police state (this is unscientific and illegal excess) when referring to the Arab Republic of Egypt.

Constitutional Formation Methods¹

- By grant
- By contract
- By a constituent assembly
- By the people through a referendum
- By international conventions.

The following is an explanation for each individual method:

1.By Grant

In such case, the constitution is originated by the monarch's will, as he approves waiving a part of his powers or organizing the way to utilize such powers, such as the constitution granted by King Louis XVIII in June 1814. This method of constitutional issuance is mainly criticized for the non-advancement of democracy.

2.By Contract

This is the second method to develop a constitution in a monarchical country as the contract is concluded between the monarch and the people. Accordingly, the people become a principal party in this contract that is an irrevocable contract except after the agreement of the two parties. This method assumes a kind of the advancement of democracy. The criticism to this method is mainly summarized that the monarch equals the people, although he does not share sovereignty with the people. As long as sovereignty is given to the people, the monarch is not entitled to conclude a contract which determines the competences of the monarch and of the people's representatives.

3.By a Constituent Assembly

This method is more democratic than the previous two methods as the constitution is made by an assembly that is elected by the people. This method was applied in the U.S. in each state

¹ Dr. 'Abd al-Hamid Mitwalli, the book titled "The constitutional laws and regimes"

after independence. Each and every state, as well as the U.S. Congress, approved the U.S. Constitution. Furthermore, the same method was applied to France's Constitution in 1948.

4.By the People through Referendum

In such case, the constitution is developed by a committee to be presented in a referendum. This constitution comes into effect after being approved by the people such as the French Constitution in 1946 and the Egyptian constitutions of 1956 and 1971.

5.By International Conventions

The issuance of some constitutions is based on international conventions such as the Polish Constitution of 1815 and the German Constitution of 1871.

According to the above mentioned, it can be said that the methods of the constitution issuance differ from one country to another in accordance with the extent of its democratic enhancement, as well as political traditions and experience. Further, constitutional issuance has experienced many phases as follows:

- First: Monarchs are the sole holders of authority from the legal perspective which is called the grant method.
- Second: People's efforts oblige monarchs to recognize their right in sharing power which is called the contract method.
- Third: People are the sole holders of constituent authority which is called the constituent assembly method that has resulted in the referendum method.

Development of the political concept of the term "constitution" in the West

Greek philosophers were the first to tackle the term 'constitution' in its political sense, but Aristotle was the most prominent philosopher in founding a constitution as an important political conception where he added in his writings about politics a lengthy explanation of the constitutions which emerged in old Greek cities and explained and analyzed each of these constitutions in detail, clarifying its advantages and disadvantages, besides classifying the countries in accordance with this analysis. Aristotle had studied some 150 constitutions belonging to the Greek cities and eventually reached important conclusions about what could be applied from rules contained in these constitutions as if he was saying that it is not important what the constitutions envisages in terms of principles, values and rules of political

organization in society. What is important is the ability to apply these rules and principles efficiently so as to achieve the aspired goals.

The use of constitution, as a political concept, started in Ancient Greece. However, the modern and contemporary use of this term is related to theories of the social contract and the democratic movement which started in Europe in the early 11th century as a tripartite struggle between papacy, monarchy and feudalism.

The people were not a party in this struggle, but they felt its strength. The triumph was for the group supported by the people. It ended up by imposing its sovereignty on the political authority from which it derived its legitimacy instead of the divine source of a legitimacy.

Legitimacy, in this regard, concisely means the citizens' satisfaction with and acceptance of their rulers.

Dr. Dāhir Ghandūr (Lebanese political researcher) wrote this in a study entitled “Roots of Modern Democracy” which was published in 1993. He stated that the variations of coalitions led to the emergence of two different ways before reaching this final result. These are: the French theoretical style stemming from the people supporting monarchy where there was a heated debate on sovereignty and the English experimental method resulting from the people allying with nobles and gradually expanding participation in ruling. The parliament was formed and established until the parliamentary system of rule was completed. Through this long struggle, many conventions and laws were issued laying the foundations for constitutional development resulting in democratic regimes.

This leads us to inquire about the characteristics of a constitution in democratic regimes as if a constitution lacked these characteristics so it is rather closer to the antithesis of democracy, i.e. dictatorship.

Qatari researcher, 'Alī Khalīfah al-Kūwarī, defines general common principles and characteristics of democratic constitutions as follows:

1.No sovereignty to an individual or few individuals over people:

This principle represents the rephrasing of the so-called people's sovereignty principle which is an expression of constitutional democracy and legislation.

In the past, sovereignty meant the absolute right in taking decisions without any restrictions. The concept of sovereignty had emerged amidst special circumstances in Europe, particularly in France.

However, in contemporary democratic constitutional practices, there is no absolute right without restrictions in granting authorities the prerogative to give orders. Even the people do not have this absolute and uncontested right. The people exercise their powers by virtue of the constitutional provisions. Each contemporary democratic constitution is confined to general inalienable rights and freedoms as well as laws and beliefs that should be observed.

Accordingly, this principle requires the election of individuals responsible for the executive authority that are constitutionally entitled to control the government's decisions and policies, and of individuals responsible for the legislative authority (parliament) who are constitutionally entitled to issue laws within the limits of the constitution and to question the executives about the performance of their tasks.

2.Sovereignty of law provisions

Democratic government is characterized by the application of this principle. Such application points out that this principle has three characteristics² as follows:

- Any authority is not entitled to issue an individual decision by itself except within the limitations specified by the constitution.
- Every decision should be respected by the authority that has issued it.
- Restrictions imposed by the state on an individuals' freedoms and activities shall not be enforced except by a law approved by the people's representatives in the parliament.

The application of this principle must be guaranteed by a judicial authority that renders penalties against any violations of the principle's regulations and revokes administrative decisions that violate the law. Independence, integrity and fairness must be present in this judicial authority.

² Dr. 'Abd al-Hamīd Mitwallī, constitutional laws and political regimes, the previous reference.

The most prominent phenomenon of the principle of governance by the provisions of law is the principle of the “supremacy of the constitution” meaning that there is no text or rule higher than it or even equal to it in rank. Hence, its provisions cannot be violated. This principle, which is the basis for a constitutional democracy, leads us to two important results:

- Emphasis on the principle of legitimacy through the issuance of a constitutional framework by which laws are created and by which the legislator’s power in issuing laws is limited.
- Emphasis that the constitution specifies all competences and all state authorities shall comply with their constitutional competences.

3. Separation of powers and achieving the balance among them:

A democratic constitution is not based on the concentration of the authority under the control of a single entity, but rather on the distribution of authority and the achievement of balance among the authorities for decision making, execution and control. The executive and the legislative branches are separated so as power would not be confined to any of the government’s branches while achieving the required cooperation among them in order to facilitate political action. Democratic government stipulates that the constitution prohibits the consolidation of powers. Democratic supporters were quite convinced with the necessity for the constitution to create institutions ensuring the separation of powers and allowing each authority to carry out its competences identified by the constitution.

4. Guarantee of rights and public freedoms

This aspect of a democratic constitution is represented in provisions guaranteeing the practice rights and public freedoms which is an integral dimension of a democratic constitution. Hence, a democratic constitution is as eager to guarantee these rights and freedoms as much as it is eager to define the competences and behavior of authorities.

5. Transfer of power

The principle of peaceful transfer of power among legitimate political movements represents a fundamental principle of a democratic constitution. This transfer shall be made in accordance with the ballot results.

These are the most important characteristics of a democratic constitution, created through long years of struggle between the supporters of the granting of power and those who encourage restricting it, a process which has contributed to the development of the constitution as a political and legal concept. Through these phases, in relation to the struggle's outcome in each phase, the concept has been achieved which we call the democratic constitution in its developed form. This has also led to the creation of a host of original constitutional traditions which are governing political action in the western countries. This has contributed to providing the proper framework for ongoing constitutional development in these countries that consider it normal and not imposed from outside the society unlike the situation in non-European western countries.

Development of political concept of constitution in Arab and Islamic countries³

With the start of the modern renaissance age in Arab and Islamic communities in the 19th century Arab and Islamic intellectuals are of the opinion that the solution to the problem of absolute power is represented in constitutional government as it has been the secret of the freedom for Europeans as well as for their prosperity and strength. 'Abd al-Rahmān al-Kawākbī may be the most prominent of those who expressed this condition in his important book (The Nature of Despotism) where he viewed that despotism, meaning the absolute power of an individual, is opposing science, religion, civilisation and development.

He underlined that despotism is the basic problem in the political life of Arab and Islamic communities and despotism never leads to abolishing the moral existence of a nation and cancelling the principle of the nation's control of the ruler. The despot could be an individual or a government transgressing all rights, as despotism mainly means to act freely and take decisions at will.

Kawākbī stressed on the necessity of getting rid of despotism and confining the ruler's power while *Shaykh* Muhammad 'Abduh asserted that in Islamic *sharī'ah*, there is no space for whims or personal or categorical interests, and that the ruler should originally be restricted by the *Qur'ān* and *sunnah*. He underlined that despotism is the basic problem in the political life of Arab and Islamic communities and despotism never leads to abolishing the moral existence of

³ "The constitution of the Arab Republic of Egypt and amendments thereof issued on 11 September 1970", Youth Political encyclopaedia, Al-Ahram Center for Political and Strategic Studies (ACPSS)

a nation and cancelling the principle of the nation's control of the ruler. The despot could be an individual or a government transgressing all rights, as despotism mainly means to act freely and take decisions at will.

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Shaykh Muhammad Rashīd Ridā felt that executive authority, that the government should be subject to the *sharī'ah* and the constitution should conform to it, and he supports the democratisation of legislation, referring to the possibility of involving non-Muslim members in the legislative council or the council of deputies as he calls it, and he approves absolute majority rule within the framework of the council.

Lebanese researcher Jamīl Muhaimenah ⁴said that Rashīd Ridā views that the constitutional government is the one which conforms to Islam, while the constitution is the country's *sharī'ah* and laws laid down by experts through the Shūrā.

Accordingly, the ruler should not be despotic; he has to stick to *sharī'ah*, as well as the laws set by the consultation council (shūrā). In his book "the political language of Islam", Bernard Lewis said: with the beginning of the Islamic Arab renaissance era.

Arab and Muslim intellectuals feel that the solution of the problem of the absolute power is represented in constitutional government which is the secret in the Europeans' freedom, prosperity and strength, as opined by the Middle East Muslims and all Muslims all over the world.

He noted that Tunisia was the first Islamic state to announce its constitution in 1861, followed by many others... especially in Turkey, Egypt and Iran. He also said that the first Islamic constitution drafted as a result of a successful opposition movement against the ruler was the Iranian constitution which the Shah was obliged to sign in 1906. He further noted that the term

⁴ Jamīl Muhaimenah, study, Models of the Development of Arab Political Terminology

first used to refer to the constitution was the Fundamental Law, in order to differentiate between it and the Shari'ah rulings.

Lewis refers to the obvious impact of the western European thought on the constitutions which emerged in the Arab and Islamic countries, noting that the new states established after the World War I and II were provided by written constitutions and restrictive powers, following the Western style, and that Muslim constitutionalists attempted to find grounds for their new rules in Islamic *shari'ah* provisions.

Accordingly, we can say that constitution has been developed as a legal and political conception in the Islamic Arab communities, although it agrees, in principle, with the western context of the development of this concept which revolves around restricting the ruling power, yet it differs in many aspects which had their implications on the development of the concept of constitution and its application in these countries. Among these aspects:

- Most of these communities were subject to western colonization, and there were suffering from the problems resulting from this status. Despite of the colonists' claims that they seek to make these colonies civilized... especially in terms of democratic and constitutional reform as well as developing their conditions, yet colonial powers used to stumbling the constitutional and democratic development process in these countries in case it was hindering there interests. A sharp split took place at the intelligentsia level in the society between those of western education and culture and others of Arab and traditional Islamic culture, a matter which led to a conflict between the two sides and which had negative impacts on democratic development and constitutional reform in these countries. It is strange that this conflict still exists until now, and it became more severe than it was at the beginning of the Renaissance.
- The actually achieved outcomes as a result of adopting western concepts in political action were limited. Bernard Lewis views that the amulets coming from the west have not found any charm, and the drugs offered by foreign agents and mediators didn't remedy the diseases found in the Islamic world, a matter which necessitates for the countries to make an all out review for their conditions. In spite of the presence of an Islamic Arab reference for the constitutionality of the Islamic political regime, where the political regime is Islam is basically a constitutional system, as the ruler is confined

to the rulings of *Qur'ān* and *sunnah*, yet returning to the constitutional concept of the political regime in these countries has been influenced by other useless references coming from the European western communities, thus, returning to the original reference doesn't aim at setting foundations for rebuilding the constitutional political regime; but it aims at reconciling the fundamental and the newcomer coming from the West. This has resulted in a political and constitutional structure imposed from abroad on these communities which lacked the natural foundations.

Types of Constitutions

Constitutions are divided into written and unwritten constitutions in terms of recording and into flexible and inflexible constitutions in terms of the method of amendment.

- **Written constitutions:** A constitution is deemed a written one if most of its rules are written in an official document or several documents issued by the constitutional legislature.
- **Unwritten constitutions:** These are customary rules applied for many years until they become binding laws such as the English Constitution. Sometimes they are called customary constitutions given that custom is considered the main source for their rules. The British Constitution is considered the most prominent example of an unwritten constitution because it derives most of its rulings from custom and some of them from the judiciary. However, there are some written constitutional rulings such as the 1958 law which allowed women to become members in the House of Lords.
- **Flexible constitutions:** These are the constitutions that are amended through the same procedures made for the amendment of ordinary laws, namely, by the legislative authority such as the English Constitution.
- **Rigid constitutions:** These are the constitutions that require more strict procedures than those that are applied in the amendment of ordinary laws such as the Federal Constitution of Australia.

The Principle of Constitution Supremacy

The principle of the constitution supremacy means that the constitution is the superior law in the country as illustrated by most of the world constitutions such as the Italian Constitution and the Somali Constitution.

Such superiority is based on two main aspects as follows:

- **Substantive supremacy:** This means that the constitution handles subjects other than handled by the ordinary laws which are based on the object and content of constitutional rules. This supremacy is based on the constitutional laws and their content which are not confined to particular constitutions, but found in all written and customary constitutions whether rigid or flexible. Based on the substantive supremacy, a constitution is the fundamental law in the state, setting its objectives and laying down its economic, social and political framework for it. Additionally, the constitution is the sole authority that forms the governing authorities and defines their competences.
- **Formal supremacy:** This means that the specific procedures applied in the development or amendment of the constitution are more severe than those that are applied to develop and amend ordinary laws. This superiority is only found in rigid constitutions. Formal superiority results in two authorities: namely, constituent authority that establishes the constitution and established authority that is the authority that has been instituted. Further, such superiority ensures respect of the constitution and its rules and regulates the control over the constitutionality of laws.

Control over the constitutionality of laws

Control over the constitutionality of laws aims at verifying that ordinary laws issued by the parliament are consistent with the provisions of the constitution as the latter is the superior must not be violated. In the case that a violation of the constitution is proved, the violating law is amended or cancelled.

Dr. Muhammad Abū al-'Inīn⁵ pinpoints that countries differed in terms of endorsing the principle of censorship of the constitutionality of laws. The countries endorsing this principle

⁵ Dr. Muhammad Abū al-'Inīn (First Deputy President of the Supreme Constitutional Court of Egypt) in his research entitled “the role of constitutional censorship in boosting democracy and the rule of the law”.

also differ in terms of the body that should take over this task and the competences and powers granted to it by the virtue of law. Some countries, foremost among which Britain, prefer not to endorse the system of control of the constitutionality of law, given that their system is based on the principle of the sovereignty of the parliament, so it's difficult to restrict its power or accept any surveillance on the legislations it issues.

Among the countries which adopted the principle of the constitutional censorship, some pursued the method of political control such as France whose Constitution, issued in 1958 stipulates that its constitutional council would be in charge of the censorship. Other countries preferred the method of judicial censorship before issuing the legislation, i.e. referring the draft laws to a specialized judicial quarter for examining them from the constitutional aspect... if this quarter decided that such draft laws are unconstitutional, it becomes the legislative authority's duty to amend them with the constitution's limitations such as adopting the method of the subsequent judicial control over the laws' constitutionality and the judicial censorship of the laws' constitutionality, according to Dr. Abū al-'Inīn's study which sets two basic conditions:

First: The existence of a written constitution.

Second: The constitution is rigid and cannot be amended with the procedures applied to amend ordinary laws.

Additionally, there are two main models for judicial control over the constitutionality of laws: the decentralized model which state courts are given a mandate to decide upon the constitutionality of laws in accordance with procedural law which implies the possibility of conflicting decisions in this regard. The other model involves a single court that is entitled to examine the constitutionality of laws. The judgment of the latter is deemed binding on all courts and authorities in the state which is the case in Egypt.

The Supreme Constitutional Court

Headquartered in Cairo, the Supreme Constitutional Court is the highest court in the Arab Republic of Egypt (ARE) which controls the constitutionality of laws and revokes all laws that violate the articles of the Egyptian Constitution. It is a judicial panel that is independent of the legislative and executive authorities in Egypt. Additionally, it is composed of a chairman, one

or more deputies and an adequate number of counselors. Its judgments that are rendered by seven counselors are final and cannot be challenged by any means.

Furthermore, the Supreme Constitutional Court is entitled to determine the functionally competent court in case there is a conflict involving the implementation of two conflicting rulings, provided that the conflict should appear before two judicial quarters or bodies of judicial competence. Moreover, the conflict must originate from two decisive rulings and it is also preconditioned that the two rulings are contradictory, making it difficult to implement them. Finally, it is preconditioned that the two rulings whose implementation is disputed are passed by two functionally independent courts.

If the trial court permits a person to lodge the constitutional case before the SCC, or in case that the objective court ruled to refer the constitutional case to the SCC, the initial pleading that is submitted to the court (in the first case), or the submission decision from the trial court (in the second case) should include the legislative text which is unconstitutional and the constitutional text that is contradicted as well as specifics of contradiction, otherwise the case would be unacceptable.

As for the initial pleading of the dispute on competence or the case of implementing the two final rulings, and official copy of the two rulings, disputed for competence or for contradiction in implementation should be submitted. Otherwise, the case is not accepted. The legislator must enjoin the suitor of these two cases to adopt this procedure or the case will not be accepted.

Competences of Supreme Constitutional Court

The Egyptian Constitution issued in 1971 included provisions on the Supreme Constitutional Court from Article CLXXIV to Article CLXXVIII. In addition, the law of the Supreme Constitutional Court No. 48 in 1979 specified its competences as follows:

- Control concerning constitutionality of laws and regulations.
- Interpretation of legislative texts that cause a contradiction when being implemented.
- Deciding in disputes of jurisdiction among judicial authorities or entities with judicial jurisdiction.

- Deciding in the dispute that from arisen from the implementation of two contradicting conclusive judgments.
- Interpretation of laws issued by the legislative authority and decisions issued by the President in accordance with the provisions of the constitution if they cause any dispute when being implemented.

The Supreme Constitutional Court has activities at the international level such as its membership in the Federation of Courts and Supreme Constitutional Councils, as a supervisor in the Federation of Courts and European Constitutional Council and as a supervisor in the Federation of Constitutional Courts of Latin American Countries.

The SCC can, in all cases, judge on the unconstitutionality of any provision in a law or a regulation being presented to it when assuming its competences and connected to the dispute presented before it after pursuing the stipulated measures for preparing the constitutional cases.

Nature of Judgments rendered by Supreme Constitutional Court

- Judgments of the court shall be rendered in the name of the people.
- The court shall automatically decide on all sub-issues.
- The court's judgments are final and cannot be challenged.
- The court's judgments in constitutional lawsuits are binding on all state authorities and all entities.
- All above judgments shall be published in the official gazette without fees no later than fifteen days of their issuance. Based on a ruling of unconstitutionality of any provision in a law or a regulation, the decision would not be enforced starting from the following day of publishing the ruling otherwise another date would be fixed. However, the verdict of the unconstitutionality of a tax provision is direct in all cases, without prejudice to the suitor's benefit from the decision stipulating the unconstitutionality of this provision. In case the unconstitutionality of the verdict is related to a criminal provision, the issued conviction verdicts, based on this provision, would be considered void and null. The head of the college of commissioners would inform the attorney general of the verdict immediately after being issued.

The History of the Article II of the Egyptian Constitution

If we look back in history, we will find that Egypt remained governed by modern, positive laws throughout the last century. In this regard, our respected professors⁶ said the following:

“The Egyptian civil code was laid down in 1948 in accordance with the Islamic *sharī’ah* by the prominent Islamic scholar, Dr. 'Abd al-Razzāq al-Sanhūrī Pasha. The explanatory memorandum of the draft of the Egypt civil code issued in 1948 states that “among the sources of legislation are jurisprudence, customs and Islamic *sharī’ah*”. So, what is the purpose behind the Article II of the Constitution except to declare the Islamic identity of the state and to impose an Islamic religious character?

A national civil state does not need a legal provision to protect it, but rather, its strength is based on the faith of individuals adhering to it.

The Article II of the Constitution, which misleadingly claims to be supra-constitutional, has imposed a religious character on the state and is deemed a grave violation of Article XVII of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and Article II of the Resolution No. 47/135 of the General Assembly of the United Nations in December 1992, regarding the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

No state may call itself civil when it assigns an official religion for itself. It is time for us either to be a civil state and to remove the text on the official religion of the state from the constitution or, if we wish to keep the text as it is, to acknowledge that Egypt is a religious state and not a civil one. Remaining in the grey zone between the civil and the religious state results in nothing but revolving in a vicious cycle.

This Article II of the constitution did not exist in the constitution of 1958 drafted during the Syro-Egyptian unity at the time of Jamāl 'Abd al-Nāsir. It was President Anwar al-Sādāt who wanted the constitution to state explicitly that Egypt is a religious, Islamic state.

⁶ Dr. Wahīd Ra'fat, former deputy chairman of the State Council.

We believe that Article II of Constitution may be found in an Islamic society in which all citizens are Muslim, if there is one, but in Egypt where there are some 15 million Christians, it is not good, with such a large Christian presence, that Egypt declares its Islamic identity and mixes religion with politics.

History has proved that religious a state is not successful regardless of how long it exists. The future in the age of globalization is for a modern, civil, multi-religious state which separates religion from politics and the state.

No political reform or democratization will be achieved unless the Article II of the constitution is cancelled. I would like to present to you an example of a large Islamic country like Malaysia as a good example of an Islamic country, hoping that all Islamic countries, especially Egypt, would implement the real democratic reforms adopted by Malaysia. We may benefit from Malaysia by reading its constitution that protects the rights of all citizens regardless of their religion despite the fact that a large percentage of the Malaysian population are not Muslims and even not believers in one of the heavenly religions, yet the Malaysian state respect their religions.

The situation in Egypt is different. In Egypt, we can find a supreme court issuing a verdict accusing a number of Egyptian citizens who reject hypocrisy and lying about apostasy because of Article II. A verdict in the 21st century is still speaking about apostates! Article II of the constitution was also behind the court ruling that separated Dr. Nasr Hāmid Abū Zayd and his wife, an incident that has very negatively affected Egypt's political and cultural prestige in the outside world and in the international community.

The demand for a secular, civil state that has civil institution and civil society is a national demand, not only a Coptic one, and it is also the demand of many liberal, cultured Muslims. ⁷Let our national slogan “religion is for God and the nation is for all” be Egypt's lifebelt so we may bring Egypt back to its pioneering status in the whole world.

⁷ For example not for limitation: Dr. Sayīd al-Qimnī, Dr. Rif'at al-Sa'īd, Counsellor Sa'īd al-'Ashmāwī, Dr. Tāriq Hijjī, Dr. Nawāl al-Sa'dāwī, Iqbāl Barakah, Ahmād 'Abd al-Mu'tī Hijāzī, Dr. Shākir al-Nābulī and Dr. 'Amr Ismā'īl.

The Origins of Article II of the Egyptian Constitution

The roots of Article II of the Egyptian Constitution⁸ can be traced back to Article CXLIX of the Egyptian constitution issued in 1923 which stipulates that “Islam is the religion of the state, and Arabic is its official language”.

Article CXLIX was proposed by *Shaykh* Muhammad Bakhīt in May 19, 1922 and was quickly approved by members of the committee formed to draft the text of the constitution. This article was approved unanimously, unreservedly and without debate. Then, this article was repeated in every Egyptian constitution starting with the 1923 constitution, the 1930 Constitution and then the Constitution of 1956 that was drafted following the 23 of July Revolution, and then the 1971 Constitution. The only exception was the Constitution of 1958 which was enacted during the period of unity between Egypt and Syria as it was not completed.

The text of Article II in the 1971 Constitution further stated that “the principles of Islamic *sharī’ah* are a primary source of legislation” which was later amended on May 22, 1980” to make *sharī’ah* “**the**” main instead of “**a**” main source of legislation.

The difference between the two phrases is clear. Prior to this amendment, the text does not dismiss other sources of legislation, yet after adding the definite article “the” it restricted other sources of legislation. By this amendment, the positive legislator placed a restraint on the legislative authority by obligating it to draft legislative texts that were consistent with the principles of Islamic *sharī’ah* which were considered by the constitution as **the** source from which laws must be proceed and **the** reference that legislators must refer to.

This text means that no legislation contradicting *sharī’ah*-derived provisions of absolute certainty and significance may be enacted because such provisions are not open for *Ijtihād* as they represent an unchangeable basis that tolerates no diverse interpretations and alternatives. Such provisions are absolute and not conditioned by time or place, so they cannot be transgressed or twisted.

⁸ Islam is the religion of the state, and the Arabic language is its official language. The principles of Islamic law are the chief source of legislation.
Egypt’s Government Services, *Constitutional Declaration, 2011*, <http://www.egypt.gov.eg/english/laws/constitution/default.aspx> (July 29, 2012).

Article II of the constitution has been the subject of much opposition from people who demand removing or amending the same.

Some people demand replacing “Islamic *sharī’ah*” with “heavenly laws”. Dr. Sa’d al-Dīn Ibrāhīm, the chairman of the Director of Ibn Khaldūn Center for Developmental Studies⁹ has made this demand more than once. He said in this respect that he hopes that Article II of the Egyptian Constitution stipulating that Islamic *sharī’ah* is the main source of legislation would change, “We proposed an amendment that makes heavenly laws the main source of legislation”. Today, loud voices are demanding the removal of this article or re-drafting it to bring back the original text before the amendment introduced on May 22, 1980.

The Origins of the Problem¹⁰

The problem of Article II of the Egyptian Constitution lies in several aspects, the most significant of which is the misunderstanding of and confusion regarding the relation between *sharī’ah* and the law. Article II of the Constitution speaks about the principles of Islamic *sharī’ah* and this is not something new because the same provision has almost existed since 1949 in the first article of the civil code. There are similarities and differences between the two provisions which we will address later.

By the principles of Islamic *sharī’ah* in the article of the Constitution and the civil code, it is meant the general principles of Islamic *sharī’ah*. According to Dr. Sanhūrī, these are the universal principles of *sharī’ah* that are not the subject of dispute among Muslim jurists. There is no doubt that the general and universal principles of *sharī’ah* are among the general principles of Egyptian laws and that they are derived from the general concepts prevailing in Egypt.

If the constitutional legislator had better phrased the text of the Article II and had not confused the general principals and the sources of law, Article II would not have triggered such fuss.

⁹ The Newsweek, edition dated 1/5/2007

¹⁰ Patricia Prentice, Article II of the Egyptian constitution, Arab-West Paper no. 1,

Nushin Atmaca, Arguments, Alternatives and Amendments: Article two of the Egyptian Constitution, Arab-West Paper no. 2

Article II of the Constitution, which stated in 1971 that the principles of the Islamic *sharī'ah* is a main source of legislation and later “**the** main source of legislation” has triggered much concern and objection among the supporters of a civil state and, on the other side, much jubilation and euphoria among the supporters of a religious state.

I would like to tell the supporters of the civil state not to get too much upset and to the supporters of the religious state not to rejoice too much as this article, in spite of its clearly erroneous phrasing, does not pose a threat to the Egyptian civil state that is two hundred years old.

There is great confusion and total misunderstanding of the relation between *sharī'ah* and the law among many cultured people and even lawyers. Some jurists attempt to dispel this confusion by posing the right questions concerning *sharī'ah* and the law.

The Right Questions about the *sharī'ah* and Law

The most difficult part of any research is determining what the right questions are¹¹. The mistake of a large number of researches can be attributed to the wrong or mistaken questions they posed.

In this research, we are posing the right questions regarding this highly controversial subject about *sharī'ah* and the law.

There has recently been much debate about the civil state and the religious state and most of these debates come under the umbrella of political conflict or conflict over the law. I am not interested in entering into a political debate or conflict over the law, but I am going to handle this subject in a purely scientific manner in the context of the theory of knowledge and the general theory of law.

The first of these questions is: What is the difference between the first article of the civil code that has been adopted since 1949, which stipulates that the judge renders his judgments based on the principles of the Islamic *sharī'ah* in the absence of any applicable legislation or custom,

¹¹ Professor Samīr Tanāghū, “professor of civil law at the faculty of law of Alexandria University: Article II of the Egyptian Constitution and Establishing the Principles of Islamic Sharī’ah as the Primary Source of Legislation.

and the Article II of the 1971 constitution which states that the principles of Islamic *sharī'ah* are **a** main, or **the** main, source of legislation?

The second question is: What is meant by the sources of law? And what is the difference between the sources of law, the essence of law and the general principles of law?

The third question is: What is meant by the general idea of existence in a certain society from which the general principles of law are derived?

The fourth question is: Is the Islamic *sharī'ah* included in the general principles of law or the sources of law?

The fifth question is: What are the sources of law with regards to the substantive rules derived from foreign legislation or religious laws?

The sixth question is: Is there a complete separation between religion and law in the civil state or is it an incomplete separation similar to separation of authorities?

The seventh question is: Is it true that the legal judgments in a theocracy are divine judgments or are they in all cases human positive judgments?

The eighth question is: Is there a conflict or a possible conflict between the general principles of Islamic *Sharī'ah* and positive law or is the relationship between two one of harmony and integration?

The ninth question is: Does the adoption of the general principles of Islamic *sharī'ah* affect the civil state that has existed in Egypt for two hundred years.

The tenth question is: How do secular states such as Germany, Italy and Turkey permit the creation of religious political parties while Egypt does not? Or does secularism represent a bulwark against any possible transgressions by religious parties?

The eleventh question is: If all legal judgments in both civil and the religious states are positive and man-made, what is the difference between the two states?

I believe that the readers now recognize the significance of this subject and that there is more confusion than understanding and that it is time to reveal the truth about it. This is what we are going to do now.

1.The different aspects of the word “law” and the precise technical terminology of each.

When we speak about the word “law”, and with greater reason when we are phrasing a legal rule, we should be fully aware of the huge difference between the various aspects of the law and to be familiar with the real meaning of the precise technical terms expressing each of these aspects.

First, there is the essence of law and there are the general principles of law, the sources of law, the content of law, the natural law and the positive law. If we confuse these terms, we are confusing the various aspects of law and we immediately enters into a circle of ignorance and misunderstanding. If we seek a correct understanding of what is meant by the principles of Islamic *sharī’ah* referred to in the Article II of the Constitution and the first article of the civil code, we should first understand what is meant by the various aspects of the law and the precise technical meaning of the terms of each of these aspects. But first we will briefly explain aspects of agreement and disagreement between Article II of the constitution and the first article of the civil code.

2.Similarities and differences between Article II of the Constitution and the first article of the civil code.

The second paragraph of the first article of the civil code adopted since 1949 stipulates that “In the absence of any applicable legislation, the judge shall decide according to the custom, and custom failing, according to the principles of Islamic law, and the principles of Islamic law failing, according to the principles of natural law and the rules of justice”.

Article of the 1971 Egyptian Constitution stipulated that “Islam is the religion of the state and the principles of Islamic *sharī’ah* are a main source of legislation”. Following the amendment of 1980, Islamic *sharī’ah* became “**the** main source of legislation”.

The difference between the two articles is that the article of the civil code is addressed to judges in the context of Civil **Code** while the Article II of the Constitution is addressed to legislators regarding all laws.

There is another technical difference between the two articles. While the drafting of the first article of the civil code was free from any errors as the text was drafted by the pioneer of Arab jurisprudence, Dr. 'Abd al-Razzāq al-Sanhūrī, on the other hand, the drafting of Article II of the Constitution involved a major error as it confuses between the sources of law and the general principles of law in one sentence consisting of five words. It is said that this text was drafted by Dr. Sūfī Abū Tālib, former speaker of the People's Assembly.

In spite of the above mentioned differences, there are similarities that outweigh the former. Both texts are related to the general principles of Egyptian law and not to the sources of law and they both speak about the principles of Islamic *sharī'ah* not detailed provisions of Islamic *sharī'ah*. By the principles of Islamic *sharī'ah* it is meant, as explained by Dr. al-Sanhūrī before the Egyptian Council of Elders during the revision of the text of the first article of the Civil Code, the universal principles of Islamic *sharī'ah* that are not the subject of disagreement among jurists.

Accordingly, we can declare with complete confidence and assurance that Article II of the Constitution does not deserve all the fuss made over it.

This article has not made a radical change in the Egyptian legal system, it does not pose a threat to the civil state that has existed in Egypt for some two hundred years ago and it does pave the way for the creation of a religious state. This is due to the fact that it does not come as something new and its provisions have existed in the civil code since 1949. Nevertheless, its erroneous drafting has to be corrected in order to reflect the real intention of the constitutional legislator. The error in its drafting is, as we mentioned before, the confusion between the general principles of law and the sources of law. It is inappropriate to preserve such confusion when there is a chance to amend the constitution. For more clarity, we are going now to show the difference between the sources of law and the subject of the law.

3. There should be no confusion between the sources of law and the subject of the law.

The difference between the sources of law and the subject of the law is of a profound philosophical nature and the first one to highlight it with full clarity was the prominent German philosopher, Kant, as he used it to remove the confusion between the positive law and the natural law, a subject we will address later. We do not want to start with the sophisticated philosophical arguments in order not to exhaust our readers. That is why we are going to explain this philosophy through actual examples of legislation. Everyone knows that Egypt adopted in 1875 and later in 1882 the major French codes. The term 'code' means a comprehensive law regulating a complete branch of law such as the civil code, the commercial code, the criminal code or the code of legal procedures.

When the mixed codes were enacted in 1875 and later the national codes in 1882, most of the positive provisions contained in these codes were completely derived from the positive provisions of the major French codes. So, the subjects of both the Egyptian codes and the French codes are identical. Nevertheless, the Egyptian codes are not traced back to the will of the French state, but to the will of the Egyptian legislator who copied its content from the French codes, no doubt.

The Jurisdiction of the Egyptian Supreme Constitution Court

The jurisdiction of the Supreme Constitutional Court is the monitoring of compliance to the constitution and to give it precedence over any other legal rules. Since Article II of the Constitution gives precedence to the general principles of Islamic *sharī'ah*, namely its universal principles, over the constitution. Article II of the Constitution establishes a requirement that prevents the adoption of any legal provision conflicting with the principles of Islamic *sharī'ah*, otherwise it shall be deemed a denial of what is necessarily known in religion, which was confirmed by the several rulings issued by the Supreme Constitutional Court.

The Supreme Constitutional Court also pointed out that, in case a ruling or law conflicting with the principles of the holy *sharī'ah* and its provisions is issued, any of the concerned parties in the respective lawsuit may challenge such ruling or law before the Supreme Constitutional Court. In case the Constitutional Court ruled that the challenged ruling or law does conflict with the provisions of *sharī'ah*, the rulings of Supreme Constitutional Court, as

per the articles No. 48 and 49 of the Law on Supreme Constitutional Court promulgated by Law No, 48 of 1979, shall be of absolute conclusiveness for all other parties and for the State with its various authorities as a conclusive saying in the matter judged on. Such conclusiveness precludes controversy over rulings issued by the Supreme Court or presenting such rulings before the court anew for reconsideration.

It is worth mentioning that some laws, such as laws on crimes and penalties, extension of indefinite-term lease contracts and others that have not complied with this constitutional, restrains because of the obligation on positive legislators to take the principles of Islamic *sharī'ah* as a main source of legislation, following the amendment of Article II of the Constitution, only applies to legislations enacted after the date on which such obligation was placed. So, if any of these legislations involve a contradiction with the principles of Islamic *sharī'ah*, it is deemed in conflict with the constitution. However, legislation enacted prior to this date are not subject to this constraint.

So, if some laws are not subject to the constitutional constraint requiring adherence to the principles of the Islamic *sharī'ah*, the universal rule states that "What cannot be completely attained, should not be completely left."

Based on Article II of the constitution and the enforcement of its provisions, the Supreme Constitutional Court has declared a number of legal provisions unconstitutional due to their conflict with the rules of Islamic *sharī'ah* among these are:

1. The first article of the Law No. 241 of 1944 imposed a succession duty on inheritances by charging a tax on net funds transferred to each heir and such tax becomes payable from the date of death. In this regard, the Court ruled the following: "Inheritors and respective shares, and rules of transfer of the titles of underlying assets, are determined in accordance with the provisions of Islamic *sharī'ah*. All such provisions are of absolute certainty and significance. Such provisions must not be misused and no agreement to other provisions should be made. Such provisions are applicable to all Egyptians including non-Muslims even if the latter agree on applying their own religious rules. The above mentioned indicates that the Islamic *sharī'ah* is the ultimate reference for all that is related to the rules of inheritance including whether a person is eligible to inherit or not

and which financial assets are distributable among deceased's heirs (Appeal No. 25 of the legal year No. 15 of 5/12/1998).

2. The second paragraph of the article No. 49 of 1977 regarding the leasing and selling of real properties which regulates the relation between the leaser and the lessee. This article provides that the partners of the original leaser of real property in which a commercial, industrial, professional or craftsmanship activity is practiced, may continue in practicing the same activity after the leaser relinquishes it. Court mentioned that the default rule in financial assets, according to the universal principles and well-established basics of Islamic *sharī'ah*, is that the ownership of all assets are attributed to God the Almighty who appointed human beings as His successors and made them responsible for cultivating the land and spending their funds rationally. The Islamic *sharī'ah* places an obligation on the caretaker to regulate the use of funds in order to guarantee fulfillment of *sharī'ah*-based purposes linked to it and anything to the contrary shall be deemed a kind of waste and aggression.

3. He just aims at preventing involvement in any delusive acts, along with its being a kind of task to the caretaker to organize the use of money to guarantee achieving its relevant lawful objectives. To achieve such objectives, spending the money should be done away from any wasteful and extravagant means or aggression that comes in violation of the group's interests or breach the rights of others that should be taken into consideration. Therefore, the caretaker, in preservation of property from being wasted, should work through the lawful organization to avoid stealing such money by others and inflict any unjustified harm on its owners or extend the vicious circle of harm. Warding harm inflicted on others is obligatory. If two kinds of harm seemed combined, there should be enough resolve to bear the light one to avoid the greater. Whereas the harm is great or flagrant, it is obligatory to deter it whenever its boundaries exceed the acceptable limits. Another obligation placed on the caretaker is to protect ownership of assets and make sure that no harm may be inflicted unjustly on the owners of the assets by others (Appeal No. 4 of the legal year No. 15 of 6/7/1996).

4. The first paragraph of Article No. 72 of the personal status code of Orthodox Copts regarding the change in custody from the mother to the father in case a court divorce ruling is issued in favor of the father (Appeal No. 151 of the legal year No. 20 of 3/6/2000).

5. The second paragraph of the first item of the second article of the Law No. 48 of 1941 regarding combating fraud and deceit as it involved a presumption that people working in trade and hawkers are aware of fraud involved in their businesses unless they proved the contrary. Herein, the law has established a legal presumption which is enough to become evidence on committing an act of fraudulence of a specific commodity. Such act should have been investigated by the general prosecution itself within the context of its established commitment to settle the proof on the crime committed to the defendant, especially the criminal intention of doing the act with the knowledge of the actualities that give it the criminal indication. In this regard, the court ruled that the regulations of a just trial are represented in a group of preliminary rules whose contents reflect a system with comprehensive features which take into consideration the preservation of human dignity and protection of his basic rights and prevent with its guarantees the misuse of penalty in a way that brings it out of objectives. Such regulations should abide by a set of values that guarantee the defendants' rights to get the minimum limit of protection that should not be relinquished or diminished. Such rules, even if they are procedural in origin, but its application in the criminal lawsuit and all over its stages could necessarily affect its final outcome. Such rules imply the innocence as a primary rule dictated by nature and imposed by the principles of the Islamic Sharī'ah as Prophet Muhammad said: "Wherever possible, do not inflict punishments (*hudūd*; singular *hadd*) on Muslims; if there is a way out for someone, let him go. It is better for the ruler (*imām*) to err in forgiveness than for him to err in punishment." (Appeal No. 31 of the legal year No. 16 of 20/5/1998).

In other cases the Supreme Constitutional Court emphasized that certain legal provisions are consistent with Islamic Sharī'ah after they were challenged by some people who claim that such provisions involve violations of the general principles of freedoms, equality and social solidarity. For example:

1. The first paragraph of the first article of the Law No. 25 of 1920, amended by Law No. 100 of 1985 obliges the husband to support his wife financially, even if she is rich. The court rules that it is well-established through *sharī'ah*-derived principles and repeated rulings issued by the court that the husband has responsibility for the full maintenance of the wife in exchange for her not allowing any other person to have access to that which is exclusively the husband's right, i.e. sexual intimacy. Allah Almighty says: "Let him who

has abundance spend of his abundance, and he whose provision is measured, let him spend of that which Allah has given him. Allah asks naught of any soul save that which He has given it. Allah will vouchsafe, after hardship, ease.” This *sharī’ah* -derived rule referred to in the first paragraph of the first article of the Law No. 25 of 1920, amended by Law No. 100 of 1985 is based on the principles of Islamic *sharī’ah* as the primary source of legislation. It is one of the *sharī’ah*-based provisions that are of absolute certainty and significance and not open for interpretations. (Appeal No. 23 of the legal year No. 20 of 15/4/2007).

2. The fifth paragraph of Article XX stipulates that the mother is entitled to child custody. If the mother is not capable of performing her duty as custodian, the right passes to her mother (the minor’s maternal grandmother) followed by the child’s paternal grandmother and aunts. In this regard, the court rules that no religious text of absolute certainty establishes a decisive rule in the sequence order of custodian following the mother which opens the door of *Ijtihād* through *sharī’ah*-based evidence.

The *fuqahā’* unanimously agreed that the mother is most entitled to custody of her children and then the maternal grandmother is the one which follows the mother in the custody order. As per the Hanbalī, the custody of children is established to the mother and then the grandmother and the great grandmother and then comes the father and his female relatives, while the Shāf’ī said that the mother is entitled the right to custody of her children; after her comes the grandmother on the condition that she is an heir, and then the father and his mother. The Hanafī and Mālikī ruled that the maternal grandmother should be entitled the right to custody after the mother. This is the text that has been evaded by the appeal text to realise the interests of the children and their right to custody taking into account the collective targets of *sharī’ah* and its general principles. (Appeal No. 164 of the legal year No. 19 of 3/7/1999).

3. The provisions of Article XII of the law No. 43 of 1982 regarding the termination of monopoly of endowed lands. In this regard, the court ruled that “The rules of monopoly are originally derived from Islamic *sharī’ah* that regulates monopoly for reclaiming endowed lands whose returns are not sufficient for their maintenance and whose replacement is not possible (Appeal No. 73 of the legal year No. 19 of 7/2/1998)
4. The last paragraph of Article XI of decree No. 25 of 1985 regarding some regulation of personal status, amended by Law No. 100 of the year 1985, regarding the Court’s carefulness prior to ordering divorce between to spouses and it mentioned that the

procedures established by court aimed at allowing the wife enough time before she requests divorce and it obliged the court to exert efforts in settlement of the conflict. It means that reconciliation is better than separation. It has made an obligation on the court to seek to reach an agreement between the spouses based on their marital conditions and the reasons of their discord and make all possible efforts to reach such objective.

If the Court has been unable to bring about a reconciliation between them and the complaint keeps recurring, without the harm, being established, the Court shall then appoint two or three arbitrators – to again seek to reach reconciliation – who shall be acquainted with their situation and have the ability to bring about reconciliation between them and clarify the grounds of their dispute to eradicate their roots in implementation of God Almighty saying: “And if you fear a separation between the two of them, appoint an arbitrator from his family and an arbitrator from her family. If they desire reconciliation, Allah will bring them into agreement. Verily Allah is knowing, knowledgeable.”

If it is proved after making all the aforementioned actions that the family’s interests were not realised because of an expanded discord between the spouses that tore apart its unity and endangered the marriage bond and abolished affection, compassion and mutual understanding, herein comes the appeal text – at the end – to issue a separation ruling between the spouses who have a deeply-rooted discord to allow them an outlet, remove the harm and embarrassment and prevent them for living a desperate and miserable life in a way that comes in line with the righteous *sharī’ah* and taking into consideration its objectives and principles. (Appeal No. 197 of the legal year No. 19 of 3/4/1999)

Article II of the Constitution and a Comparison with Other Similar Cases

No doubt there are several precedents of countries that refer to religion in its constitutions. We will first present the case of the Turkish constitution and then refer to other constitutions within the same context.

The Case of the Turkish Constitution¹²

In 1924, the first republican constitution of the Turkish state was issued. The second article of this constitution states that Islam is the official religion of the state. In a newspaper article

¹² Nūr ‘Abd al-Rahmān, the second article of the Turkish Constitution

titled “The case of the Turkish constitutional”, Dr. Yahyá al-Jamal¹³ described this constitutional text as “A symbolic text indicating that Islam is the official religion of the state without producing any religious effect on the components of the state and its powers”.

For this reason and under this constitution that merely indicated that Islam is the official religion of the state, the Swiss Civil Code was adopted as the basis for the Turkish Civil Code replacing the previous law based on Islamic *sharī’ah* known as “Mecelle-i Ahkamı Adliye” (“The Medjelle”). The Turkish Civil Code issued in 1926 was a prelude for the Constitution of 1928 which ignored the symbolic article referring to Islam as the religion of the state. Then comes the landmark principle in the Constitution of 1937 which declared Turkey a secular state. The constitution of Turkey insistently laid a deep foundation based on “Kemalism” not on the religion of God. It starts with this preamble: “In line with the concept of nationalism and the reforms and principles introduced by the founder of the Republic of Turkey, Ataturk, the immortal leader and the unrivaled hero, this constitution, affirms the eternal existence of the Turkish nation and motherland and the indivisible unity of the Turkish state”.

The second article of the Turkish constitution states: “The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Ataturk, and based on the fundamental tenets set forth in the Preamble”.

As such, the second article of the Turkish constitution summarizes in few words the history of the long conflict between the Islamic identity of Turkey and the ungovernable inclination towards westernization and the dictation of secular systems adopted by Ataturk and supported by the Republican People's Party he created in 1923.

Dr. Yahyá al-Jamal says about the program of Republican People's Party¹⁴, “The signs of secularism started to appear in the literature of the party when its program pointed out that the party wanted the laws of the state to be based on what is dictated by science and agrees with the basics and requirements of modern civilization. It deems religion a sentimental matter that

¹³ The article authored by Dr. Yahyá al-Jamal “The case of the Turkish Constitution (1-2) Al-Misrī Al-Yawm , September 27, 2010.

¹⁴ Dr. Yahyá al-Jamal, the previous reference.

should be protected against any kind of interference as long as it is practiced within the framework of the law". We should look carefully at the last sentence as it briefs the clash between secularism and Islam ideologically and practically. Secularism as an ideology regards religion as a sentimental matter which contradicts the Islamic religion which regards religion as law and a lifestyle. In practice, secularism involves a commitment to protect religion against any interference as long as it is practiced within the framework of law.

This commitment contradicts actual practices witnessed during the rule of the People's party in the Kemalist era which refers to the rules of Kemal Ataturk (1923-1938) and Esamt Anino (1938-1950). During the Kemalist era, law was used as a tool for oppression against religion and the secular regime persecuted all religious manifestations, laws, rituals and symbols and fought against them under the umbrella of law.

The new Turkish state started with the abolishment of the Islamic caliphate on 3 March 1924 and then it issued the Law on Unification of National Education, closed the old-style religious schools and abolished the religious endowment agency. In this way, Turkish secularism was not a separation between religion and the state, but the management of religion by the state.

Then, Ataturk started to target all aspects of the identity of the state and he led a revolution against Turkish attire. A law issued in 1925 introduced the use of Western style hats instead of the fez whose wearing was prohibited. The issuance of such law was a source of astonishment, but what was more astonishing, were the suppression campaigns that targeted violators of this law. In order not to limit civil dress to headwear, the dress code of 1926 imposed the wearing of western-styled dress by civil servants and school and university students. This code was used to prevent the taking of the oath by parliament member, Merve Kavakçı, in 1999 because she wore a headscarf.

In order to break the link between Turkey and Islam and Arabs, Kemal Ataturk decided to replace the Arabic-based alphabet with a new Latin-based Turkish alphabet and a law was issued to prohibit the use of the Arabic alphabet and establish a language commission to purify the Turkish language of Arabic terms.

Ataturk went a step further when on 30 December 1932, the *mū'zzin* (a person who calls for Muslim prayers) of Aga Sofia Mosque recited to the *azān* (prayer call) in the Turkish language for the first time. The move staged the scene for the issuance of a law in 1934 under orders from Ataturk to recite the *azān* in the Turkish language obligatory and anyone who violated this law would commit a breach of state order and its regulations and could be sentenced to six months in prison.

This opened the door for writing the Holy *Qur'ān* in the Turkish language and even performing prayers with it. It allowed authorities banish anyone seeking to teach or learn *Qur'ān* in Arabic, and if captured while doing so, he could face charges of violating of the Latin Letters Law!

In 1935, FRidāy was replaced by Sunday as the weekly holiday and civil servants were obliged not to perform the FRidāy Prayer. Mosques were the target of the worst practices during this era as some of them were closed and others became headquarters of the People's party. A number of mosques were rented to banks and companies and other, with the support of authorities, were turned into pubs and gambling centers. Even largest and most famous mosques immune from this oppression as the mosque of Aga Sofia was turned into a museum and the mosque of Muhammad al-Fātih (the conquerer) was turned into a warehouse. The mosque of Sultan Ahmad as well was used during the World War II as an army barracks.¹⁵

As for the Civil Code issued in 1926, it conflicted with *sharī'ah* provisions as follows:

Marriage: It became civil meaning that the requirements of Islamic marriage such as a guardian for women and dowry were abolished. The religion of the two partners no longer mattered which allowed for a Muslim woman to marry a non-Muslim man and polygamy became prohibited (at the time it did not criminalize adultery).

Divorce: The husband was stripped of the right to divorce his wife or to grant her the right to divorce as divorce required a court decision issued by the competent court. Both partners were allowed to turn to the court for a divorce and it had the sole authority to decide upon the matter.

¹⁵ Nūr 'Abd al-Rahmān, the second article of the Turkish Constitution

Inheritance: *sharī'ah*-based provisions on inheritance were changed, giving males and females equal shares (with the claim of gender equality) which reflected an ignorance of the *sharī'ah*-derived wisdom behind the inheritance distribution in Islam in which the portion for a female in many cases could be more than that of a male.

Turkey also cancelled inheritance by way of consanguinity. It is worth mentioning that these changes to inheritance laws have not met the aspirations of feminist organisations and gender-equality advocates. These were merely one step on a long road that has been followed by many others, the last of which was the amendment enacted by the Turkish parliament in November 2001 which targeted removal of a shameful clause, in the view these feminist organisations, stating that "the man is the head of a marital union". It granted women equal rights to property acquired during marriage while the previous law accorded property to the spouse in whose name it has been bought or registered. Further, the husband became entitled to receive maintenance upon divorce.

This has been the outcome of the experience of secular rule in Muslim Turkey during the Kemalist era and the second article's ignorance of the identity of the nation and its religious reference which granted constitutional legitimacy to all laws targeting Turkey's Muslim identity and contradicting with Islam¹⁶. The Turkish experience makes it clear that secular rule described in Western countries as non-religious turns into an anti-religious one in Islamic countries. This is an undeniable fact that is forced by the nature of the Islam which goes beyond religious sentiments which secularism sets as the borders of religion which is why conflict is unavoidable.

Cases of other constitutions

1. Greece: The first article of the Greek constitution states, "The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ" while Article No. 47 stipulates that any person who ascends to the throne of Greece shall be a follower of the Eastern Orthodox Church.

¹⁶ Dr. Suhayl Sabbān "The development of cultural circumstances in Turkey" and Dr. 'Alī Muhammad Al-Salābī, the Othman State, the factors of progress and reasons of the collapse"

Note: There are millions of Christians in Greece who embrace the Catholic and Protestant denominations. There are also millions of Muslims and no one has objected to the first article of the Greek constitution as long as it is understood that the majority of the Greek state is of the Orthodox denomination.

2. Denmark: The first article of the Danish constitution of Section 5 stipulates that “The King shall be a member of the Evangelical Lutheran Church”, while it states in Section 3 that “The Evangelical Lutheran Church shall be the Established Church of Denmark”

There are large numbers of Orthodox and Catholic Christians and Muslims in Denmark, but no one objects to the cited articles.

3. Spain: The seventh article of the Spanish constitution provides that “the head of the state shall be a member of the Catholic Church”, while Article 6 of the constitution stipulates that "The State shall officially protect the profession of the Catholic faith and performance of its rituals as the official state religion".

Note: There are Orthodox and Protestant Christians and Muslim in Spain, yet no one has demanded the abolishment of these articles of the constitution as long as it is understood that the majority of the Spanish people are followers of the Catholic Church?

4. England: There is no written constitution per se as it is founded partly in conventions and customs and partly in statute. However, the third article of the Act of Settlement stipulates that no Roman Catholic or anyone married to a Roman Catholic may hold the English Crown. The Sovereign must be a member of the Angelical Church. Further, non-Christians and non-protestants are not allowed to be members in the House of the Lords.

Note: Let’s agree that only Protestants are allowed to be members of the House of the Lords. Is this not a violation of United Nations Conventions and the Declaration of Human Rights issued in 1948?

5. Important information: The name of the ruling party in Germany is the "Christian Democratic Party".
6. Norway: The second article of the Norwegian constitution states that “The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same".
7. Iceland: Article 62 of the constitution of Iceland in states that “The Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State”.

8. Scotland: The Church of Scotland is the Presbyterian Church which is the officially recognized religion. The new monarch makes a coronation oath before the accession council and all men of religion vow allegiance to the monarch before his accession to the throne.

Article II of the Constitution between Amendment and Removal

When speaking about the future of Article II of the Egyptian Constitution, we must be a clearer understanding of the text of this article because there is much disagreement among jurists regarding the precise definitions of the terms it includes, some of which are ambiguous. The following is a summary of definitions that I have reached:

- Islam is the religion of the state: This means that the practices of the state adhere to the values, principles, purposes and provisions dictated by the Islamic religion. The attribution of a religion to the state is not a heresy as it is found in many European countries (such as Sweden and Denmark) and in Latin America (Bolivia and Peru). In the same way, that an action may be attributed to a legal entity, such as a state, or an organization and a company, is familiar and undeniable.
- Concerning that “Arabic is its official language”, it means that the state is obliged to use the Arabic language in its correspondence as this language preserved in the Holy *Qur’ān*, the Prophetic *sunnah* and the heritage and history of the nation. Renouncing the Arabic language would mean breaking the link with all these.
- “The principles of Islamic *sharī’ah*” means its universal principles that are not the subject of dispute among jurists as defined by the prominent scholar 'Abd al-Razzāq al-Sanhūrī, the first to establish this concept in the Egyptian legal system, more specifically in the Civil Code issued in 1947 which is still applicable in Egypt. This definition is more precise than the definition offered by the Supreme Constitutional Court that "These are provisions of absolute certainty and significance".
- "The main source of legislation" means that it is the origin from which the legislative authority should derive legislation, or at least not to issue any legislation that contrary to it. The Supreme Constitutional Court adopted an approach which made this article only applicable to legislation enacted after 1980 and not before, something which was described by some jurists as “of political, not legal ends” and which limited the impact of Article II in terms of time and subject.

- The Supreme Constitutional Court has been blamed for insisting that Article II is only addressed to the legislative authority and stands helpless before the legislative authority's reluctance to act on underlying provisions to date which empties the text of its contents and separates it from the legislative environment to a large extent.
- Although Article II of the Egyptian Constitution has existed forty years ago, no religious state was created in Egypt and no single incident of discrimination between a Muslim and a Christian or an aggression against freedom of thought or other rights or freedoms has occurred as a direct result of the second article. The actual situation in Egypt implies that the real problem that the nation was suffering from was the "police state" in which the executive authority expanded its influence enormously until it gained dominance over all other authorities and stood as an obstacle between the people and their freedom.

In the next section, I will briefly mention facts that emphasizes that the Article II is innocent of the charges leveled against it.

Arguments by opposers of the Article II of the Constitution¹⁷

Article II of the Egyptian Constitution stipulates that “Islam is the religion of the state, Arabic is its official language and the principles of Islamic *sharī’ah* are the main source of legislation”.

1. What is the source of legislation? In democratic constitutions, the source of legislation is the free will of the representatives of the people and what the people decide through their freely elected representatives. Adopting any other source of legislation means placing a restriction on the freedom of people and thus establishing an authority that is higher than the authority of the people. This goes against democracy and it squanders the rights of the people regardless of whether the Egyptian people have a Christian minority or not. That is why Article II contradicts the third constitution which stipulates that “Sovereignty is for the people alone”.
2. Article II of the Constitution recognizes the principles of Islamic *sharī’ah* as the main source of legislation, but what are these principles? These principles are subject of

¹⁷ Zaynab ‘Abd Allāh, Nafīṣah ‘Abd al-Fattāh, Researcher from Zionist center demands shari’a deleted from Egyptian constitution, in: al-Usbua, 19 December 2005 and AWR, 2005, week 51, art. 48,

Cornelis Hulsman, Questions concerning Yūsīfīnā Sālih: Second article of the Egyptian constitution, AWR, 2005, week 51, art. 50

much dispute among various Islamic movements and even between *sunnah* and shiites. There is no specific document of these principles that is unanimously agreed by all people. Even the Holy *Qur'ān* is not regarded by most jurists as the only source of the principles of *sharī'ah*. The Holy *Qur'ān* is one of the sources of *sharī'ah* and there are many other sources. So, how it is possible to make legislation in the constitution derived from an unspecified and undefined source?

3. If the principles of the Islamic *sharī'ah* are not clearly defined for all people, even for all Muslims and *sunnī* Muslims, then the people who can determine these principles will have distinguished positions compared to the rest of the people, namely *sunnī* Muslim men of religion and *sunnī* Muslim men of religion are the ones who will determine the principles of *sharī'ah*. That is why they strongly defend Article II of the constitution because it grants them privileges over the rest of the people. It contradicts Article XL of the constitution which states that "All citizens are equal before the law" and Article 8 which stipulates that "the State shall ensure equal opportunities for all citizens". Suppose, for the sake of argument that these principles are known and identical for every Muslim. Would not the Muslim representatives of the people have automatically adhered to these upon making decisions on behalf of the nation?
4. A number of commentators argue that Article II is addressed to legislators meaning that legislators must abide by the Islamic *sharī'ah* when drafting laws and legislation. In spite of the fact that the article is unlimited, it does not explicitly say that "legislators shall abide by *sharī'ah*". It still places the people in authority, or legislators, under the authority of the principles of *sharī'ah* which can only be determined by men of religion. This makes elections mere nonsense as long as men of religion have the final decision as to what the principles of *sharī'ah* are, as it is the situation in Iran.
5. Egypt as a country has double religious identity with a Muslim majority and a Christian minority along with many other religions. As Article II states that "Islam is the religion of the state", it place all non-Muslims outside the boundaries of the state. It is a discriminatory text that contradicts all international charters and the Egyptian constitution itself. The second article of the Universal Declaration of Human Rights provides that "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion". What illustrates in the text that "Islam is the religion of the state" is discriminatory is that no state in fact has any type of religion. Religion is for

human beings such as faith and sincerity. It has nothing to do with organizations and authorities. The words “Islam is the religion of the state” means nothing except to discriminate against non-Muslims. In order to make the picture clearer, we know that all Muslims have an obligation to pray five times a day, but does the state pray? This text also contradicts with the first article of the Egyptian constitution which provides that “The Arab Republic of Egypt is a state with a democratic system, based on citizenship”, because citizenship does not agree with the supremacy of any religion. It also contradicts with Article V of the Egyptian Constitution which states that “And no political activity shall be exercised nor political parties established on a religious basis” and with Article XL which provides that “All citizens are equal before the law. They have equal public rights and duties without discrimination on grounds of race, ethnic origin, language, religion or creed.”

6. Many lies have been propagated with regards to Article II of the Constitution. One of these lies is that the abolishment of this article is aimed at diminishing the role of religion which is completely untrue. Article II of the Constitution has not been known in its current form except in the early 1970s. Does this mean that before that date Egyptians were not religious? Does this mean that we have not been religious for hundreds of years? Even when we did not have a constitution at all, were we not religious? This is a lie propagated by men of religion who benefit from Article II of the constitution.
7. We do not have to agree with some of the practical viewpoints offered by those advocating Article II of the constitution, including the following for example:
 - Islamic *sharī'ah* is the reason behind the progress achieved by Muslims in the past. This is a lie as *sharī'ah* was only established long after Muslims achieved progress. Many countries adopted the *sharī'ah* only several years ago, such as Pakistan, Saudi Arabia, Egypt and Sudan. Did these countries achieve progress or backwardness? Nowadays, no developed country establishes religion, regardless of its kind, as one of the sources of legislation.
 - *Sharī'ah* has an answer for every question. This is a lie as no definite answers for many questions are to be found in *sharī'ah* even for critical questions such as the type of ruling system in Islam. The selection of the first four Caliphs, during the golden age of Islam, was each time made in a different manner. There was no Islamic political system as explained by *Shaykh* 'Alī 'Abd al-Rāziq in his book

“Islam and Governance” in the early twentieth century. There is also no Islamic social or economic system, but there is no enough space to elaborate on this point.

8. There are many other objections to Article II of the Constitution. Among these are that it is the basis for discrimination against women in the constitution (Article XI) and that it makes the state the caretaker of religious affairs, while these affairs belong to individual and that the state should not interfere in matters that are not of its concern, otherwise it would be considered as a kind of tyranny.
9. President Anwar al-Sādāt added Article II to the Constitution for pure political purposes as he sought the support of the Muslim Brotherhood in getting rid of Nassarist and leftist opposition and to avoid their political endeavors leading up to the Camp David Accords. There was no true religious or Islamic motive behind the drafting of Article II of the Constitution in its current form.

Arguments against Article II of the Egyptian Constitution¹⁸

Article II and Copts

The most sensitive subject is related to the impact of Article II on Christians. Actually, Article II does not affect Christians in any way except that it establishes a reality based on a historical fact, namely that they belong to the Arab-Islamic civilization or as Makram 'Ubayd expressed it “Christians by religion and Muslims by nation”. So the matter is related to their cultural identity and not to their religion or their religious laws which Islam recognizes as their right to have recourse to as long as they abide by the general system of the state. Egyptian Christians are not facing real problem under the Article II for two reasons, one related to the Islamic *sharī'ah* itself and the other is related to the constitution.

As for the reason related to the *sharī'ah*, Article II speaks about the principles of Islamic *sharī'ah* among which is a principle which states that “there is no compulsion in religion”. Non-Muslims who belong to the “People of the Book” have equal rights and duties as do Muslims. The general rule in Islam is to deal with them with justice and righteousness, which is one of basic principles governing the relation between Muslims and “People of the Book” in a Muslim state.

¹⁸ Cornelis Hulsmán with assistance of Prof. Mike Fowler and Dr. Wolfram Reiss, Reviewing Yūstīnā Sālih's “Law, the Rule of Law, and Religious Minorities in Egypt,” MERIA Journal, vol. 8, no. 4, art. 7, December 2004, AWR, 2005, week 51, art. 49,

Nabīl Lūqā Bibāwī, ‘Dr Nabīl Lūqā Bibāwī’s response to AWR’s questions on Yūstīnā Sālih’s article on the 2nd article of the Egyptian Constitution,’ AWR 2005, week 51, art. 51.

As for the second reason related to the constitution, it is the constitution itself as Article XL stipulates that “All citizens are equal before the law. They have equal public rights and duties without discrimination on grounds of race, ethnic origin, language, religion or creed.” This text applies to all Egyptian citizens and since constitutional texts do not contradict themselves, then the text of Article II must be interpreted in a way that does not contradict with Article XL. Accordingly, no Christian should be denied any public posts, based on Article II of the Constitution, except posts that have special religious nature. For example, a priest may not assume the position of the Grand *Shaykh* of the Azhar. The same way, a Muslim may not assume the position of the pope.

Although in reality, there some contradictions as no Christian assume high-profile jobs in the state such as the positions of army commander, president and prime minister, yet this has nothing to do with Article II of the Constitution, but rather is due other factors. Among these factors is the fact that Christians are a numerical minority and Muslims are the majority. The applicable rule is “The majority rules and guarantees the rights of the minority”. Further, the prevailing social culture does not regard as acceptable the assumption of sensitive positions by non-Muslims which can be addressed by collaborative endeavors for spreading the culture of full equality among citizens and rejecting categorization of people by religion, except for jobs that are religious by nature as previously explained. Further, we must ensure that all state organizations operate in a complete institutional manner so that no single individual may be the only decision-maker in the state. This would ease opposition to the persons in state positions regardless of their religion

About the concern that Article II is manipulated in the violation of rights and public freedom of citizens in the name of religion, we can answer this concern by saying that the true understanding of Article II would make the activation of this article the objective of all citizens and civil society organizations as it makes the realization of people’s rights a (religious) obligation which every one has to pursue its fulfillment through legitimate means. The Islamic *sharī‘ah* is better in this regard than international conventions which some people call for establishing as the reference.

Misinterpretations¹⁹

These wrong interpretations are due to either preoccupation with secondary issues such as some people wanting to impose wearing of *hijāb* on women through the ruling authority. Raising such issues cause problems regarding Article II that may be explained through the following:

1. Inability to make the distinction between the Islamic *sharī'ah* and jurisprudence derived therefrom whether due to ignorance or negligence. This is attributing to the Islamic *sharī'ah* things that are not truly found in it, as a result of depending on a certain *Ijtihād* that suited a certain time and a specific social and ideological context.
2. Confusion between the Islamic *sharī'ah* and Islamic speech. This makes some people think that the opinions of some preachers reflect the Sharī'ah while many of those preachers are woefully ignorant of jurisprudence in reality, the jurisprudence of balances and the jurisprudence of consequences and the jurisprudence of priorities and the jurisprudence of progression.
3. The dishonest political manipulation of the issue of the amendment of Article II of the Constitution. This manipulation, in contrast to what is widely known, is mostly done by the state, not Islamic movements. Anyone who seeks evidence of this can examine how raising this subject has diverted people's attention from lifting the restriction on the number of presidential terms during the rule of President Sādāt and how the attention of people was diverted from constitutional amendments made during the rule of President Mubārak which aimed at giving the state a free hand to control society and its institutions, rights and freedom as people were satisfied as long as Article II was not touched.

So, Article II has been unfairly blamed for things it has not cause and has been used to divert people's attention and obstructed their unity. So, how can we address this problem? Do we abolish, amend, leave it partially suspended, or activate it?

¹⁹ 'Abd al-Mu'tī Bayyūmī, Dr. 'Abd al-Mu'tī Bayyūmī refutes falsehoods of American researcher, in: al-'Usbū', 19 December 2005 and AWR, 2005, week 51, art. 52,

'Abd al-Mu'tī Bayyūmī, 'Response to AWR's questions on Yūsūf Sālih and Article II of the Egyptian Constitution,' AWR 2005, week 51, art. 53,

The suggestion for abolishment of this article may trigger unrest. Further, it is not possible to ask at least 90% of the Egyptian people to renounce their religious laws and it is not possible as well to require the Egyptian people, both Muslims and Christians, to renounce their cultural identity most true-expressed by Article II of the Constitution.

If we blame the text for its misapplication by some people, then we will need to abolish most constitutional texts as they are most frequently applied either excessively or negligently. As for the alternative of amendment, it must be based on logical and imperative reasons. I believe that calls for adding a text to the article on the respect of other heavenly religions or Christians' right to have recourse to their own religious laws are needless because the Islamic *sharī'ah* already provides for these principles. Additionally, Article XL of the Constitution and other articles provide for equal rights and duties among all Egyptians without any discrimination based on religion or otherwise. For example, Article XLVI of the constitution provides that "The State shall guarantee freedom of belief and freedom of practice of religious rites".

As for the alternative of suspension, Article II is already suspended to a large extent and the continuation of such suspension has more disadvantages than advantages as it abrogates the right of the majority of Egyptian to have harmony between their beliefs and the laws they are subject to which may contradict their religious laws. The real solution is the activation of Article II of the Constitution and not its suspension. Activation of Article II needs more than knowledgeable interpretation of *sharī'ah* texts, it needs a profound jurisprudence of the existing reality so that there might be no contradiction between reality and *faqīh*. The jurist is the person who harmonizes between reality and obligation and who fulfills obligation as much as possible, not the one who create dissonance between reality and obligation.

Each age has its own wisdom and "people resemble their age more than they do to their parents" as stated by Imām Ibn al-Qayīm.

I find it strange that people who ask for the application of the *sharī'ah* and at the same time they see nothing in the *sharī'ah* except boundaries for "penalties" and forcing women to wear the *hijāb* in a society that witnessed a strange coalition between oppression, corruption and subordination. If you argue with those people on exerting effort to eliminate this "trio" which

produced poverty, illness, oppression and all kinds of injustice, they claim that, according to their limited view of Sharī'ah, this would cause unrest which is “worse than murder” and that Islam prohibits rebellion against the ruler. Those people ignore the fact that it is better and more necessary to pursue the fulfillment of Sharī'ah objectives, namely the protection of one's soul, religion, mind, money, offspring and fulfillment of the basic requirements of the “independent” state as sought by Islam which is a state that applies justice and adherence to Shūrā (or you may call it democracy as a system distanced from its philosophical roots) and decisive, and effective accountability of rulers (otherwise they are corrected through circulation of power) and protection of rights and freedom and the availability of mechanisms guaranteeing the serious application of these principles. Then comes the disciplinary or punitive aspect to protest achievements made by the state, and then the Article II would be a source of inspiration for reformers not a tool for distraction's of citizens.

The constitutional framework of the phrase “The principles of the Islamic *sharī'ah* are the primary source of legislation”²⁰

Historical background: The legal provision requiring that principles of Islamic *sharī'ah* be the source of legislation of Egypt is not a new invention. This phrase was mentioned in a letter addressed to Egyptian judges upon the application of Egyptian civil code issued in the 1940s of the last century and the Islamic *sharī'ah* has always remained one of sources of legislation.

The principles of Islamic *sharī'ah* (not its detailed provisions) as explained by Dr. 'Abd al-Razzāq al-Sanhūrī in his speech before the Egyptian Council of the Elders are “The universal principles of the Islamic *sharī'ah*” that are not subject to any disagreement among jurists”. Accordingly, it is necessary to see the phrase “principles of Islamic *sharī'ah*” in light of the fact that universal principles are based on wisdom. Since wisdom with its lingual and philosophical concepts has created a strong link between all principles produced by various religions, so the common denominator of these principles can be called the “the universality of wisdom” given to the world of human beings. This wisdom is the first mental evidence to the oneness of the creator. Accordingly, it is nearer to natural law which is the “absolute justice” or “justice in itself” as Aristotle expressed it and according to the brilliant mental insights of the

²⁰ Judge Tahānī al-Jibālī, deputy chief justice of the Court of Cassation, “the Constitutional Framework for the application of Article II of the Constitution”, Walid Printing House.

genius of Muslim scholars who sought to link between reason to wisdom and to the purposes of the Divine project from which they deduced provisions “Imamship is for the mind”.

The text included in the 1971 constitution states that “the principles of Islamic *sharī’ah* is a main source of legislation” and later in 1980 it was amended so that the principles of Islamic *sharī’ah* became “the” main source of legislation. Regardless of the circumstances that surrounded this amendment which involved exaggeration and blackmailing as the amendment to the constitutional text on presidential terms, which took place at the same time, was the subject of much suspicion on the level of constitutional jurisprudence. But following the elapse of about 27 years since this amendment, it is important to induct the general frameworks established through the rulings of the Supreme Constitutional Court and the comprehensive legal approach for the constitutional framework of the application of the respective constitutional text which can be briefed as follows:

- The constitutional legislator mentioned the term “the principles of the Islamic *sharī’ah*” not “the provisions of Islamic *sharī’ah*”. If the legislator has meant the provisions of the *sharī’ah*, he would have explicitly mentioned it which means that reference is made only to the higher principles.
- The “principles of Islamic *sharī’ah*” representing the higher purposes of Islamic *sharī’ah* as we previously explained, are unchangeable, while the provisions are changeable and subject to juristic disagreement in terms of induction techniques or interpretation approaches. One of these principles is the lack of juristic consensus that provisions derived from Islamic *sharī’ah* do have absolute biding force. This applies to the jurisprudence of Imām al-Shāf’ī whose provisions changed with the change in place and social environment as he moved between Cairo and Baghdad. This is consistent with the well-established concept that jurisprudence is the human *Ijtihād* in understanding of the purposes and principles of *sharī’ah* and thus it is changeable and open to *Ijtihād*, analogy and other techniques applied by jurists.

The principles of Islamic *sharī’ah* have reiterated in various conceptual forms and meanings in the Egyptian and Arab legal systems in general. The Islamic *sharī’ah*, with its principles and provisions, whether agreed on or not is subject to consensus, has represented a direct source of the legal provisions that are used in interpreting positive laws. National jurists have used various sources and their discretionary authority to achieve a certain interest targeted by the legislator. From this perspective, the legislator considers the principles of Islamic *sharī’ah* as

part of the general legal principles governing the legal system as a whole and they are not turned into a legal rule, unless the jurists apply them. The jurist will not be mistaken in the eyes of the judge who is obliged to apply the legal text as it is, not based on his own understanding of *sharī'ah* and its sources.

The principles of Islamic *sharī'ah* are a source of legislation because they are more defined than the principles driven from the natural law and the rules of justice that do not fit for direct application. The principles of Islamic *sharī'ah* also include the general *sharī'ah*-derived principles which were inducted from primary references and then supported by second references, such as the following principles: "the form of the contract is governed by the law applicable at the place of its conclusion", "deceit corrupts everything", "no damage and nothing causing damage".

The applied constitutional framework of the constitutional text at hand is certainly linked to the fact that the addressee is the national legislator. The national legislator may slow down, suspend or weight matters according to the interests he aspires to achieve, a matter that involve discretionary authority in deciding which juristic school he depends on.

The constitutional framework was also linked with the delegation of a wide discretionary authority in adopting the right solution from among the solutions offered by jurisprudence without obligating him to adopt a certain jurisprudence but to have the freedom to choose from among all schools and opinions and when the judge choose a certain school in case the unavailability of a legal text in the law regarding the case under examination. This comes in the framework of the legal rule applied on all litigants dictating that preponderance is give to equality of all people before the law and deeming social interest as one unit, without suspending or conflicting with other laws.

The Supreme Constitutional Court has acknowledged with repeated rulings that *Ijtihād* and exercise of judgment is permissible in controversial issues regarding which no legal text is regulating and thus establishing practical rules required by God's justice and mercy. No holiness may be ascribed to the sayings of a certain jurist or to the jurisprudence as a whole because jurisprudence is a human product that one can disagree with and should not be deemed holy. Jurisprudence is a reflection of ideological richness with the variety of *Ijtihād*.

The Court also acknowledged the right of the ruler of the national jurist to exercise *Ijtihād* in matters whose certainty or significance is presumptive. Such matters should be linked to the interest of people. The Court acknowledged as well the right of the ruler and the national jurist to seek the assistance of scientists in various specializations and their decisions should take into consideration the prophetic *hadīth* “Make things easy and don’t make them difficult”

The Constitutional Court acknowledged as well the necessity of respecting the religious laws of non-Christians in application of the principle of equality of all citizens before law. The most important reflections of this principle is the ruling that granted the same legal protection to Christian and Muslim endowments alike and standardizing the period of the husband’s absence (required for obtaining divorce) in the personal status laws of orthodox Copts and Muslims .

The constitutional approach regarding deriving provisions from the principles of Sharī’ah does not mean accepting the views of a certain juristic school or even the majority of jurists or even what was unanimously agreed by key juristic schools. This approach does not prohibit the legislator from choosing the “a preferred opinion and not “the more preferable opinion in past age” in the pursuit of a certain interest or a necessity considered by the national legislator.

Conclusion:

The above-mentioned is an attempt to define the constitutional framework of the respective text in light of its application over the years²¹. We emphasized that the application of this constitutional text and others is conditional upon the favorable political, economic, cultural and social environment.

The soundness of the national structure is bound by a treatment of the ailment of society and the cultural context of its fellow citizens in view of a consensus of their will that (one nation) is not to be divided into two and citizens shall not allow a division of the people who have been described by the deceased Egyptian geographer Jamāl Himdān as “a milling stone”.

²¹ Judge Tahānī al-Jibālī, deputy chief justice of the Court of Cassation, “the Constitutional Framework for the application of Article II of the Constitution”, Walid Printing House.

Is it possible to open the doors for an honest commitment to what the legislator intended with this text without encouraging any intentional abuse of it in a way that threatens the modern civil state in Egypt or regarding it the gate towards a religious state in violation of the correct understanding and application of it?

Based on this legal study, we can conclude that Article II of the Egyptian Constitution in its current form comes out of the context of constitutional drafts, but if we choose between its amendment or acceptance, we can conclude the following:

Amendment of this article, which I myself prefer because it is a legal provision that was given a political color for achieving political aim, precludes any future abuses of it.

Acceptance of this article is considered in light of the fact that certain controls were established by the Supreme Constitutional Court in order to avoid any misinterpretation of the article. In case these controls were changes, extremists will have the opportunity to employ pressures towards a religious state.

Section II: Relevant studies

First: Patricia Prentice study “Article Two of the Egyptian Constitution”

Arab-West Report Paper 1, March 2007

Title: Article Two of the Egyptian Constitution

Author: Patricia Prentice

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Introduction

Article II of the Egyptian Constitution, which provides that the *sharī’ah* is the main source of legislation, has attracted much international attention because of its controversial nature. Most of the reactions to the provision appear to stem from concerns in the West that Egypt has explicitly prescribed itself to be a religious state with a religious text governing as a primary source of law. Of course this stands in stark contrast to most Western, secular legislative systems. Some non-Muslim writers argue that by implication, discrimination against non-Muslims is legislated in Egypt and that Article II stands in the face of individual freedom, human rights and democracy. Some Western-influenced writers even claim that Egypt will never be an economically or politically progressive state unless the article is removed. This paper aims to challenge this view, drawing primarily from the work of Clark B Lombardi, a professor of Islamic, constitutional and comparative law, who examines the jurisprudence of Egypt’s Supreme Constitutional Court (SCC) and argues that the Court is developing a very progressive theory of Islamic law. Although it is still early for the Court, the legal future of Egypt is not as bleak as some might claim.

This paper firstly outlines the traditional methods of interpreting the *sharī’ah* which stem back to the period following the death of the Prophet Muhammad, as the Muslim community struggled to determine how it would be governed in light of the *sharī’ah*. These methods are important for understanding the presuppositions that lie beneath modern theories of Islamic law, including those which the SCC has affirmed. It secondly considers the political developments that occurred in Egypt during the 19th and 20th centuries and how the president balanced the need for Egypt’s reform with increasing demands from some groups for Egypt’s Islamization. This led to the enactment of Article II and its current wording. Since then, the

SCC has taken on the primary role of determining how Article II applies in Egypt and has developed its own unique theory of Islamic law in fulfilling this mandate. Finally the paper considers some Western authors' often emotional views on Article II and how their arguments compare to Lombardi's considered analysis of the SCC's Article II jurisprudence.

1. Traditional methods of interpreting the *sharī'ah*

Article II of the Egyptian Constitution states that, "the principles of the Islamic *sharī'ah* are the main source of Egyptian legislation." By *sharī'ah*, it means God's law: the 'path' that Muslims are obliged to follow and the rules and recommendations that human salvation depends on.²² Conceptually, early Muslim legal thinkers deduced that God had placed every possible human act on a five-part moral scale, ranging from mandatory actions that every Muslim should perform to actions that should be avoided because they would result in God's punishment.²³ Following the *sharī'ah* required Muslims to perform the mandatory and refrain from the prohibited, and God would reward those who did this.

Although God had provided an indication of what the 'path' entailed through his prophets, their revelations and conduct, and, as some argued, through the workings of the world, the revelation of the *sharī'ah* was incomplete.²⁴ Therefore Muslim thinkers struggled to determine what this "path" required in every situation and how God's commands applied to every possible human action.²⁵ With this understanding of *sharī'ah*, after the Prophet Muhammad died, the Muslim community tried to continue to follow God's way and thus made efforts to develop a legal code to govern itself based on this path. However there were a number of issues that the first Muslim scholars disagreed on including who had the authority to interpret God's law²⁶ and what sources could be drawn upon to identify the *sharī'ah*, including whether observations from nature or reason could be used to identify God's path.²⁷

Some scholars believe that the turning point in Islamic legal theory occurred during either the

²² Clark B. Lombardi, 'State Law as Modern Islamic Law in Modern Egypt: The Incorporation of the Sharī'ah into Egyptian Constitutional Law' (2006), 12.

²³ Ibid 13.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid 14.

3rd or 4th century after the prophet's death when systematic discussions began about legal interpretation of the *sharī'ah*.²⁸ Later, somewhere between the eighth and 10th centuries AD, a distinct *sunnī* tradition of Islamic *sharī'ah* law emerged.²⁹ This was particularly due to the development of independent guilds of Islamic jurists called *madhhabs* that dedicated themselves to developing both interpretative methodology and substantive doctrine of the *sharī'ah*.³⁰ After a time the guilds were given the task of elaborating God's path for the Muslim community. An individual jurists' interpretation of the *sharī'ah* was referred to as *fiqh* or "discernment" and represented what humans could ascertain of God's path.³¹

Despite the fact that the law guilds agreed on various aspects of legal methodology, substantial disagreement on important areas of interpretation still remained.³² This resulted in different theories of Islamic law developing. In some sense this was not a problem for the early jurists because they held a fundamental belief that only God was infallible and he would not punish any Muslim who, in good faith, applied a version of *fiqh* that turned out to be incorrect.³³ Yet from these areas of disagreement, two classical theories of Islamic law emerged which were used to develop an understanding of the *sharī'ah* for the Muslim community. These were *ijtihād* and *taqlīd*.

The process of *ijtihād* was only undertaken by the most qualified jurists in the guild and it involved direct engagement with religious texts.³⁴ In this process, jurists drew upon four sources of religious authority: the *Qur'ān*, *hadīth*, consensus and juristic logic.

Classical jurists would start the process of *ijtihād* by analyzing the *Qur'ān*. Although the *Qur'ān* was considered to be an accurate record of God's words, only about 500 verses directly contained legal content, most of which had to do with family law.³⁵ Jurists also faced hermeneutical problems when interpreting the *Qur'ān*. Even though a verse may address a

²⁸ Ibid.

²⁹ Ibid

³⁰ Ibid

³¹ Ibid 16-17.

³² Ibid 17.

³³ Ibid.

³⁴ Ibid 20-21.

³⁵ Ibid 22.

certain kind of behavior (which was not always the case), it was not always easy to determine what actions were being addressed and where a particular action fell on the five-point scale they had developed.³⁶ Therefore jurists developed various tools to try and identify which *Qur'ānic* passages were unambiguous and had absolutely certain meaning and thus could be used as the basis of binding legal rulings for the Muslim community.³⁷ Texts that were not absolutely ambiguous were used to make “probable” legal judgments.³⁸

The jurists also looked to the behavior of the prophet and his companions, as recorded in *hadīth*, as sources of legal authority. However these texts were also problematic because not all reports about the prophet’s actions were trustworthy. Some were believed to be third or fourth or fifth-hand accounts and some were known to be forged.³⁹ Also, jurists faced similar hermeneutical problems with the *hadīth* – if an action was recorded (and therefore undoubtedly correct), the reason for the behavior might not be apparent.⁴⁰ To address these problems, jurists developed a system of categorizing *hadīth* according to their authenticity and clarity. The most authoritative *hadīth* were those believed to be of certain authenticity with unambiguous language; the least were those that had questionable authenticity and were highly ambiguous. *Hadīth* found to belong to be most authoritative were considered binding.⁴¹ In short, the process of *ijtihād* firstly involved finding a trustworthy religious text, then interpreting its meaning.

Jurists also used consensus as a source of religious authority when undertaking *ijtihād*. This was because in several *hadīth* God had promised to protect the Muslim community from error which was understood to mean that the Muslim community would therefore never agree on a mistaken interpretation of the law.⁴² As with the other sources of authority, there were also different understandings of what could be considered legally authoritative. Some believed that only consensus amongst the first generation of Muslims (i.e. amongst the Prophet’s companions) could be considered binding while others believed that the work of later scholars

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid 23.

³⁹ Ibid

⁴⁰ Ibid 24.

⁴¹ Ibid 25.

⁴² Ibid 26.

could also be considered.⁴³

The final source of religious authority for jurists undertaking *ijtihād* was juristic logic. This came about because jurists often had to determine the legal status of actions that were not governed by clear textual commands or consensus. It was eventually agreed that logic could help determine the moral status of an action. Jurists generally used analogical reasoning when applying logic, but similarly to their other sources of authority, this interpretative methodology was problematic.⁴⁴ Sometimes jurists would come up with more than one possible ruling using plausible analogies.⁴⁵ In the end, it was determined that rulings by analogy could be considered probable determinations of the *sharī'ah* rather than certain (and therefore legally binding).⁴⁶

One particular controversy about the use of logic as a legal methodology for determining the *sharī'ah* is particularly relevant to our later discussion of Article II; that is, whether information outside of religious texts could be used during the process of reasoning by analogy. Some jurists believed that the legality of an action could be determined by considering whether its consequences were beneficial or harmful to the actors involved or to the public at large. This approach is known as utilitarian reasoning.⁴⁷ One 12th century legal theory reasoned that the goals of *aharī'ah* could be induced from religious texts. By goals, he meant either the production of a result that was beneficial or one that prevented harm.⁴⁸ The benefits could either be specific, i.e. tied to obeying a certain scriptural command, or general, reasoned out from the implications of the text as a whole.⁴⁹ This later category of general benefits was divided into three types: necessities, benefits indispensable to human well being such as religion, self, property, children, reason and honor; needs; and refinements.⁵⁰

One important supporter of the use of utilitarian reasoning was Najm al-Dīn al-Tūfī [died 716 AD] who proposed a controversial method of determining the legal status of an action by

⁴³ Ibid 27.

⁴⁴ Ibid 28.

⁴⁵ Ibid 30.

⁴⁶ Ibid 31.

⁴⁷ Ibid.

⁴⁸ Ibid 32.

⁴⁹ Ibid 33.

⁵⁰ Ibid

balancing benefit and harm. He proposed that if a jurist had to choose between two laws, he should choose the one that has as many benefits as possible or the most important benefit.⁵¹ Although his work at the time lacked support, it later had a significant impact on modern legal thinkers and the SCC.⁵²

The other major approach to legal interpretation used by early jurists was *taqlīd*, a process of deriving law from the precedents of previous jurists within a particular guild. Although *ijtihād* was regarded to be the ideal way of determining the *sharī'ah*, jurists rarely used this method.⁵³ Instead they tended to work with the rulings handed down by earlier jurists within their guild by reasoning out the principles behind the earlier ruling and then considering how they applied in their contemporary context.⁵⁴ As part of this process, jurists had to determine whether the earlier rulings were universal legal rulings (rulings that applied regardless of the time or place) or particular rulings that were dependent upon the particular context in which they were first determined.⁵⁵ This methodology had the advantage of making the law more structured and stable. However, even after its rise, there were still dissenting views both between and within different guilds on the content of substantive law and the details of interpretative methodology.⁵⁶

As is evident by now, *fiqh*, or the jurisprudence of classical jurists, was not a consistent group of legal norms, but rather a collection of often competing interpretations of God's path, each of which could be considered to be equally valid.⁵⁷ Even though this reality was accepted by the jurists, it made governance of the early Muslim community difficult for its leaders who depended on law being stable and predictable in order to rule. Prior to the 13th century different theories began to emerge about when it was legitimate for a ruler to impose a particular understanding of the law which their subjects would be obliged to obey. The most important theory in this regard was "*sīyāsah shar'īyah*" which was developed by a 14th

⁵¹ Ibid 39.

⁵² Ibid 40.

⁵³ Ibid 41.

⁵⁴ Ibid 45.

⁵⁵ Ibid 44.

⁵⁶ Ibid 45-46.

⁵⁷ Ibid 46.

century jurist.⁵⁸

The theory's name means "statecraft" or "governance" that is consistent with the *sharī'ah*, simply put, governance in accordance with the *sharī'ah*. Proponents of this theory argued that a ruler's law must be consistent with the *sharī'ah* as determined by consultation with classical jurists and it was legitimate as long as it did not command people to sin and advanced the public welfare.⁵⁹ According to this theory, state law could take two forms: either the selection of *fiqh* that courts were required to base their decision making on or the enactment and enforcement of statutes. With regards to the selection of *fiqh*, a ruler could decide to direct the courts to determine rulings only on the basis of the jurisprudence or substantive law of a particular *sunnī* guild.⁶⁰ Codified law could also be enacted on the basis of the universal rulings determined by the jurists which the ruler would enforce.⁶¹ Additionally, the Courts could be directed to apply statutory law instead of the rules of *fiqh*.⁶²

This theory reflected the key relationship between the leaders of the early Muslim community and classical jurists: a ruler could legislate, but only within the limits of the principles that the jurists had identified as universally applicable and only to advance the social benefits that they had reasoned to be goals of the *sharī'ah*. This Islamic "rule of law" helped to give the Ottoman Empire important legitimacy in the eyes of the Muslim community and made it one of the most stable Muslim empires in history.⁶³ It was this characteristic that made later political groups and rulers in Egypt advocates of this theory.

2. Development towards Article II of the Constitution

To understand how and why Article II of the constitution was adopted, it is important to consider legal and political developments that occurred during the 19th and 20th centuries in Egypt which led to renewed support for the theory of "*sīyāsah shar'īyah*".

⁵⁸ Ibid 49.

⁵⁹ Ibid.

⁶⁰ Ibid 50.

⁶¹ Ibid 51.

⁶² Ibid 53.

⁶³ Ibid 59.

19th Century

Towards the end of the 19th century, although Egypt remained officially part of the Ottoman Empire, it became in 1882 effectively a de facto British colony.⁶⁴ It was only in 1922 that it finally emerged as an independent nation state. Under the leadership of Muhammad Ali [1769 to 1849 AD], Egypt set about establishing new institutions of governance. Muhammad ‘Alī was particularly interested in European societies which represented, to him, a model of modern statehood. He sent representatives to study European government and societies and shortly thereafter imposed major reform of Egypt’s administrative, economic, educational and legal systems.⁶⁵

As Egypt began to think about what kind of law it should be governed by, there was increasing consensus that the system should be more positive – that is, that the decisions of the judiciary should be drawn from codified law, rather than precedents.⁶⁶ This move towards codified law had a number of important impacts. Firstly, it changed the long-standing role that the jurists of the law guilds had been playing in Egypt,⁶⁷ reducing their influence significantly. Also, it was no longer necessary for jurists to have extensive legal training in order to apply this new codified law which meant that people without classical legal training came to serve as judges.⁶⁸

When Muhammad ‘Alī began his series of reforms, he sought to cooperate with the guilds, but for various reasons, including self-interest, the guilds, including the prominent the Azhar, refused to accept the reforms.⁶⁹ As the guilds’ relationship with the government began to deteriorate, they also began to lose their public influence.⁷⁰ At this time Muhammad ‘Alī decided to establish new national law schools that were unaffiliated with the guilds and taught curriculum that was influenced by European educational styles.⁷¹ Increasingly his government began to hire these graduates to serve as advisors and civil servants.⁷² In short, during the 19th

⁶⁴ Ibid 61.

⁶⁵ Ibid 62.

⁶⁶ Ibid 63.

⁶⁷ Ibid 64.

⁶⁸ Ibid.

⁶⁹ Ibid 67.

⁷⁰ Ibid.

⁷¹ Ibid 68.

⁷² Ibid.

and 20th centuries, the *sunni* guilds, including the Azhar, ceased to play a key role in controlling the evolution of law in Egypt. Instead, government affiliated schools and graduates took over this role.

As Egypt began to prepare for full codification of its laws, a debate arose as to whether and how its laws should be made consistent with the *sharī'ah*. As already noted, enacting codified law was not inconsistent with the theory of “*sīyāsah shar'īyah*”, as long as it was consistent with the rules and goals of the *sharī'ah*.

However in Egypt, the codification of the law took a different direction and was instead accompanied by its secularization.⁷³ This was for a number of reasons. As codification was being considered, the government’s advisors were increasingly drawn from the new governmental legal schools. These graduates did not have the classical legal training of the guilds and thus limited understanding and commitment to the theory of “*sīyāsah shar'īyah*”⁷⁴ that had given the Ottoman Empire its legitimacy in the eyes of the Muslim community. Also, in the context of Europe’s colonization and Egypt’s new independence, many thought that it would be wiser to adopt a secular legal code modeled on European systems rather than *sharī'ah*-influenced laws.⁷⁵ This decision was a significant point in Egypt’s legal history because it represented a moving away from the former ideal that Egypt’s laws should be in line with the *sharī'ah*. Instead it was an official endorsement of a secular position.⁷⁶ There was little public resistance to this position at the time.⁷⁷

Modern Theories of Islamic Law

Egypt’s political and legal context changed dramatically during the 20th century which resulted in new theories of Islamic law being developed. Three theories in particular were influential during this period and later came to influence the SCC. Before examining the differences between the three theories, it is worth noting that they had several characteristics in common. Firstly, all three returned to the basic premise of the Ottoman political ideology: that Muslims

⁷³ Secularization, meaning a move away from being based on the *Sharī'ah*. Ibid 70.

⁷⁴ Ibid.

⁷⁵ Ibid 71.

⁷⁶ Ibid 72.

⁷⁷ Ibid.

could identify universally applicable rulings and the goals of the *sharī'ah* and that Egypt's laws would be influenced by these.⁷⁸ Secondly, they all assumed that Egypt's law would continue to be codified rather than based on judge-made precedents.⁷⁹ Thus they focused little on limiting the role of the judge and his discretion. Finally, the theories were also very anti-colonial and thus returned to legal terminology used by the classical Islamic jurists although many terms were subtly redefined.⁸⁰

One modern theory of Islamic law came to be termed neo-traditional and upheld that only classically trained scholars of Islamic law could be trusted to interpret it.⁸¹ This theory differed from classical theories of Islamic law because those who qualified to be jurists had very different training and institutional affiliations to the classical jurists of the past and use slightly different methods of interpretation.⁸² These jurists no longer worked with the primary religious texts, but applied the process of *talfīq* when determining the *sharī'ah*.⁸³ Also, these modern jurists were not brought up with the view that only the precedents of their own guild were authoritative. Thus they used rulings from a variety of different legal sources, sometimes even *Sh'īah* rulings, to determine God's path.⁸⁴ Neo-traditionalist jurists advocated that Egypt's laws must be consistent with their own interpretation of Islamic law.

Muhammad Rashīd Ridā [1865-1935] was the proponent of another modern theory of Islamic law which came to be termed neo-*ijtihād*. His theory was a two-step process, describing how *sharī'ah* principles could be identified and then turned into codified law to be applied by the government. First, a religious-legal specialist would look to the Islamic scriptures to find a body of "universal" rulings and goals of the *sharī'ah*.⁸⁵ Here his theory departed from the classical view of *ijtihād* because he insisted that the only universal, and thus legally binding, principles could be found in Islamic texts of definite authenticity and certain meaning.⁸⁶ This

⁷⁸ Ibid 79.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid 80.

⁸² Ibid 81.

⁸³ Ibid 81.

⁸⁴ Ibid 82.

⁸⁵ Ibid 84.

⁸⁶ Ibid 85.

restrictive approach caused him to reject many of the principles that classical jurists had accepted and to find even fewer universal rulings.⁸⁷ Ridā also adopted a restrictive view on the use of consensus, arguing that only principles that the prophet's companions had agreed on could be used as authoritative sources of consensus.⁸⁸

As this theory meant that less universal principles of the *sharī'ah* were determined, Ridā suggested that laws should instead be based on advancing the goals of the *Sharī'ah*.⁸⁹ Ridā's theory was thus largely utilitarian: God had revealed the *sharī'ah* through social outcomes, either benefits or harms. Laws should then be based on what would best advance the welfare or the public good of the community by seeking benefits and prohibiting harms.⁹⁰ Because, in his view, the principle of welfare was paramount, the universal principles of the *sharī'ah* based on religious texts could even be set aside in preference to the community's welfare.⁹¹

A further theory of Islamic law was advocated by Ahmad al-Sanhūrī [1895-1971]. He proposed a different method of identifying the universal principles of the *sharī'ah*: through comparative neo-*taqlīd*. Al-Sanhūrī believed that comparative and sociological tools could be applied to the different precedents that had been determined by Islamic jurists over the years to determine different types of *sharī'ah* principles.⁹² These he divided into two categories: either determining them to be fixed rules (to be respected at all times and places) or variable rules (that only applied in one particular context).⁹³ States were required to ensure that legislation was consistent with the fixed rules, but were not bound by variable rulings.⁹⁴ Al-Sanhūrī's theory was different to the classical *taqlīd* process because he suggested that all the various and competing rulings of the past on a certain subject should be compared to determine an overarching principle.⁹⁵ Codified law would then be based on this principle.

⁸⁷ Ibid 86.

⁸⁸ Ibid.

⁸⁹ Ibid 87.

⁹⁰ Ibid.

⁹¹ Ibid 89.

⁹² Ibid 92.

⁹³ Ibid 94.

⁹⁴ Ibid 95.

⁹⁵ Ibid 96.

20th Century

Returning to the context in which these theories were being developed, Egypt had just become an independent state in which Egypt's new rulers were loath to limit their power by committing to govern in accordance with the *sharī'ah*.⁹⁶ Thus the 1922 Egyptian Constitution did not contain any provision requiring deference to this source of legislation. Increasingly, however, Egyptians began to challenge the secular nature of the government and this resulted in a number of new political organizations with Islamist platforms arising who called for governance in accordance with God's path.⁹⁷ One of these new political organizations was the Society of the Muslim Brotherhood, now commonly known as the Muslim Brotherhood, who advocated that Egypt should be governed based on the writings of Rashid Ridā.⁹⁸ The Brotherhood was founded in 1928 by Hassan al-Bannā and advocated for new codes of law to be developed through a process of utilitarian neo-*ijtihād*.⁹⁹ Like Ridā, al-Bannā and the early brothers supported the idea that universally applicable principles of the *sharī'ah* could be developed from trustworthy scriptural sources which would then be applied anew in the contemporary context.¹⁰⁰ They called on the state to develop codes of legislation that conformed to these principles of the *sharī'ah*. The Brotherhood's popularity soon spread to all segments of society and it became the first organized political movement of the middle class. Although al-Bannā was assassinated in 1949, the group continued influenced considerably by Sayīd Qutb. His writings particularly promoted the idea that the government should rule in a way that maximized human welfare.¹⁰¹

While the Muslim Brotherhood gained popularity, along with the idea that law should be developed through the process of neo-*ijtihād*, Al-Sanhūrī was also rallying support for his proposal to Islamize the Egyptian civil code using comparative neo-*taqlīd*.¹⁰² As might be expected, other political factions who adhered to different legal methodology disagreed with his method of interpretation. Parliament was eventually persuaded, however, and adopted the

⁹⁶ Ibid 102.

⁹⁷ Ibid.

⁹⁸ Ibid 104.

⁹⁹ Ibid.

¹⁰⁰ Ibid 105.

¹⁰¹ Ibid.

¹⁰² Ibid 108.

new code in 1948.¹⁰³

In the years following the adoption of the civil code, strife erupted between secularists and different Islamist groups who were seeking to return to governance by the *sharī'ah*.¹⁰⁴ Political order was only restored in 1952 when Jamāl 'Abd Nāsir seized power. Nāsir's relationship with Islamist groups was strained, particularly after he began to advocate for the secular governance of Egypt. In parallel, he also worked to restrain or destroy the various political Islamic factions. Nāsir imposed severe reforms on the Azhar, bringing its university under central control, and he persecuted and imprisoned many leading members of the Brotherhood.¹⁰⁵ By the end of the 1960s, clandestine organizations inspired by the rings of Sayīd Qutb began to consider the adoption of an Islamic state by force¹⁰⁶ while the failures of Nāsir's regime began to mount.¹⁰⁷

The Adoption of Article II

By the end of the 1960's, Nāsir's regime was showing serious signs of weakness.¹⁰⁸ In the larger context, Arab nations had suffered defeat in the 1967 war with Israel and Egypt was suffering from an economic downturn.¹⁰⁹ After Nāsir's death in 1970, al-Sādāt took power, realizing that Egypt would have to engage in serious political and economic reform to survive.¹¹⁰ He decided to reach out to Islamist political factions to gain support for these changes.

In 1970, the government made an important gesture towards the Islamic groups calling for governance according to the *sharī'ah*.¹¹¹ When the new constitution was adopted in 1971, Article II stated that Egyptian legislation should be consistent with Islamic legal norms and, "... the principles of the Islamic *sharī'ah* shall be a main source of legislation." This move

¹⁰³ Ibid 110.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid 110-111.

¹⁰⁶ Ibid 112.

¹⁰⁷ Ibid 116.

¹⁰⁸ Ibid 124.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid 119.

towards Islamization was only tentative - it did not make the principles of the *sharī'ah* supreme over all other sources of legislation, but rather it allowed them to be explicitly considered as a basis for Egypt's governance. At this stage al-Sādāt's government still hoped that it could promote a vision of Islamic law that was consistent with its own social and economic policies.¹¹² However, it was also a concrete sign that he wanted to negotiate with Islamists on this issue.¹¹³

After the constitution was adopted, the government released jailed members of the Muslim Brotherhood and allowed a dialogue to resume on the important question of Egypt's governance.¹¹⁴ Islamists became increasingly vocal in this context, competing to influence the path of state legislation. The Azhar, the remnant of the former *sunnī* law guilds, became more assertive at this time, proposing legislative reforms and developing a draft code of *fiqh*.¹¹⁵ The Brotherhood united with the jurists on some matters but increasingly pursued its own agenda.¹¹⁶ Other more radical Islamic organizations also began to gather popular support in universities and cities.¹¹⁷

As Islamic groups become increasingly visible, the government continued to pursue reform that was considered unpalatable to certain groups while preparing Islamic revisions of Egypt's legislation.¹¹⁸ This process involved discussions with various Islamic constituencies, including the judiciary and the Azhar, and weekly meetings with Islamic figures.¹¹⁹ The outcome of these negotiations was the decision to amend Article II to state that the principles of the Islamic *sharī'ah* would be the **main** source of legislation. This amendment was approved by the People's Assembly on May 22, 1980, ratified by popular vote and became law.¹²⁰

Interestingly, although legislation was required to be consistent with the Islamic *Sharī'ah*, the

¹¹² Ibid 125.

¹¹³ Ibid.

¹¹⁴ Ibid 126.

¹¹⁵ Ibid.

¹¹⁶ Ibid 127.

¹¹⁷ Ibid.

¹¹⁸ Ibid 132.

¹¹⁹ Ibid 133.

¹²⁰ Ibid.

amendment to Article II did not define how the principles were to be identified or interpreted. Some believe that al-Sādāt left the terms of this article vague so that he would have a flexible basis upon which to develop his own rule based on the *sharī'ah*.¹²¹ Others also say that the article was enacted in deliberately vague terms because al-Sādāt assumed that he would continue to retain control over the judiciary.¹²² In short, Lombardi asserts that Article II of the Egyptian constitution is the product of a period in Egyptian history where the Egyptian government, suffering from a crisis of legitimacy and experiencing civil strife, reached out to Islamists in the hope that a consensus theory of Islamic law would be developed that would allow it to obtain legitimacy and popular support for its governance of Egypt.¹²³ The SCC was given the primary authority to determine how the *sharī'ah* would be applied in Egypt.¹²⁴ It began this process tentatively, but later began to confidently articulate the theory of Islamic law that would govern its jurisprudence.

3. How Article II is interpreted by the SCC

It was only in 1993 that the SCC felt the need to explain the method it was using to identify the principles of the *sharī'ah*.¹²⁵ Its theory seems calculated to appeal to diverse Islamic groups: it draws concepts from both classical and modern Islamic legal theories, but leaves its position unclear on some controversial matters.¹²⁶ The method the court is using gives it discretion to interpret God's commands in light of reason and utility but also leaves scope for developing the theory further, in a way to attract more public support.¹²⁷

The SCC explicitly revealed its interpretative methodology in Case No. 7 of Judicial Year 8 (15 May 1993).¹²⁸ In its judgment, the Court made it clear that the Egyptian government must respect the principles of the *sharī'ah* that are unambiguously recorded in religious texts that are known to be authentic.¹²⁹ It must also respect the goals or the social results of the

¹²¹ Ibid 135.

¹²² Ibid.

¹²³ Ibid 123.

¹²⁴ Ibid 141.

¹²⁵ Ibid 178.

¹²⁶ Ibid 179.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid 186.

sharī'ah.¹³⁰ Before explaining how the court identifies the unambiguous rulings and the goals of the *sharī'ah*, it is worth noting that the court has rejected the idea that only those with formal religious training, such as the jurists from the Azhar, can be trusted to interpret the *sharī'ah*. Since 1993, the court has not once deferred to the opinion of the Azhar or even cited its jurists to support particular reasoning.¹³¹ The SCC believes that the justices of the court should be ultimately responsible for interpreting the *sharī'ah* which gives it the practical benefit of maintaining control over the evolution of its Article II methodology.

The SCC uses a two-pronged test to determine whether legislation is consistent with the *sharī'ah*. Firstly, the legislation cannot violate any universally applicable scriptural principle and secondly, the legislation cannot impede the realization of the goals of the *sharī'ah*.¹³² To determine which principles are universal, the court firstly looks to revealed texts: the *Qur'ān* and *hadīth*. The SCC has not revealed the method it uses to evaluate scriptural authenticity but from its opinions it is clear that it regards the *Qur'ān* to be authentic and accurate and has tended to rely on this text in its decision making. With regards to the *hadīth* literature, the SCC tends to only use these texts occasionally and it has not revealed how it judges the authenticity of these texts.¹³³ Indeed the lower Egyptian courts have criticized the SCC for its lack of use of *hadīth*.¹³⁴

The court's method for interpreting texts and finding clear meaning is better articulated and it has drawn together different methods of interpretation.¹³⁵ Firstly, the court looks for the plain or apparent meaning of the text.¹³⁶ If it finds that the text is unambiguous, it does not stop there however. It believes that the interpretation of such texts will not change with time or place and therefore looks to past rulings from jurists to check to see if its interpretation is consistent with past understandings.¹³⁷ If this is the case, its interpretation is confirmed. In other words, the court's method of interpretation is to determine that a ruling is absolutely certain if it is tied to

¹³⁰ Ibid 188.

¹³¹ Ibid 183.

¹³² Ibid 185

¹³³ Ibid.

¹³⁴ Ibid 262.

¹³⁵ Ibid.

¹³⁶ Ibid 186.

¹³⁷ Ibid 187.

a scriptural passage that is certain in terms of its authenticity and meaning (*Ridā*) and in practical terms has reproduced itself (through the consistent interpretations of other jurists) over time (*al-Sanhūrī*).¹³⁸ The court's jurisprudence thus far shows that it has very high standards for determining authenticity and certainty of meaning and this has practical implications – it has identified few rulings that are absolutely certain which provide universally applicable principles.¹³⁹

Even if the court finds that legislation does not violate any legally binding principles of the *sharī'ah*, this does not mean it is constitutional. It must also pass the second prong of its test – that it is consistent with the goals of the *sharī'ah*.¹⁴⁰ Like all other theorists of Islamic law, the court assumes that obedience to Islamic law will promote justice and human welfare.¹⁴¹ Thus legislation should work towards and not impede human welfare. Over time a certain pattern has emerged. The court generally recognizes two types of goals – specific goals, identified through textual analysis of rulings on certain areas of law, and general goals – the results that God wants human behavior generally to promote.¹⁴²

In a 1995 decision, the court upheld that whatever God prohibits is likely to harm us and whatever he requires of us or makes permissible is certainly beneficial.¹⁴³ This means that a governmental law must not violate an absolutely certain ruling of the scripture using the justification that it will advance, in its opinion, public benefits.¹⁴⁴ The court takes the view that Muslims must look behind the certain rulings of scripture to consider what social benefits these seem to promote. When looking for specific goals, the court does not just rely on textual analysis but supplements this by analyzing historical interpretations of the scriptures.¹⁴⁵ This is particularly the case if it is not clear what results God wants the certain ruling to promote. It is clear that this approach still leaves areas of ambiguity, especially when the specific goals are ambiguous concepts like justice or modesty that have no universally agreed upon meaning, or

¹³⁸ Ibid.

¹³⁹ Ibid 188.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid 192.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid 194.

if the goals are to promote the welfare of only a particular class of people, so the court supplements this with its consideration of the general goals of *sharī'ah*.¹⁴⁶

The court asserts that there are aspects of social welfare that particular types of law are supposed to promote. These are the necessities mentioned in the classical theories of the goals of the *sharī'ah*. The SCC consistently asserts that these general goals are the promotion of religion, life, reason, property and honor.¹⁴⁷ However the court believes this list is not exclusive. As a general rule, the court says that the government may not regulate in a way that decreases the aggregate enjoyment of justice and human welfare in society.¹⁴⁸ The court suggest that the justices may use their reason to determine what this means in certain particular cases.¹⁴⁹

Finally, if the court finds that there is no universal ruling of the *sharī'ah* applicable and no specific goal that the law wants to pursue, the principle of utility then guides the court as to whether the law is constitutional.¹⁵⁰ In this regard, the court has said that the government has the right to act in a way that reason says will do the community more good than harm.¹⁵¹

In sum, the courts perspective on determining the goals of the *sharī'ah* allows it to make constitutional rulings that rely in part upon subjective judgments and does not require it to defer to executive or legislative. The court has used this methodology to affirm and reinforce its liberal constitutional jurisprudence which has affirmed social benefits like property rights and international human rights.¹⁵²

4. The contrast between Western and Egyptian opinions on Article II of the Constitution Yūstīnā Sālih

As already noted, several Western writers have reacted strongly against Article II of the Egyptian Constitution, arguing, amongst other things, that it discriminates against non-

¹⁴⁶ Ibid 195.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid 196.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid 197.

¹⁵¹ Ibid.

¹⁵² Ibid.

Muslims and curbs individual freedoms. One notable example of such claims is the 2004 article written by Yūstīnā Sālih, a PhD student of political science, called 'Law, the Rule of Law and Religious Minorities in Egypt.'¹⁵³ Her basic thesis is that Egyptian legislation is subordinate to the *sharī'ah* which makes it possible for human rights and the protection of religious minorities to be violated. Looking more closely at her arguments, it is clear that she has both misunderstood some aspects of the theory of Islamic law that the SCC is using and made some generalized assumptions which don't stand up to scrutiny.

It is firstly worth noting that Sālih's assertions about the way the court is applying Islamic law are misleading. Sālih correctly states that there are different ways of interpreting Islamic religious texts and she describes the two main theories as either orthodox (where the *Qur'ān* and *sharī'ah* has universal validity and application) or reformist (where the *Sharī'ah* is interpreted contextually).¹⁵⁴ Her article then goes on to explicitly state that for the purposes of her text, she will assume that a traditional or orthodox method of interpretation is used to interpret the constitution.¹⁵⁵ However this assumption is not correct for a number of reasons. Firstly, as we have seen, the classical or traditional methods of determining the *sharī'ah* were much more nuanced than what she has described. Different points of view existed about which types of religious text should be used to determine the *sharī'ah* and whether other sources of authority, such as consensus, legal reasoning or the benefits or harm that flowed from a particular ruling, could be drawn upon. Jurists were also careful in their determining of the *sharī'ah*. Religious texts considered to be ambiguous or of disputable authority were not used to make binding judgments for the Muslim community and not all principles of the *sharī'ah*, extrapolated from religious texts or the precedents of former jurists, were considered to be universally applicable. Secondly, and most pertinently, the SCC has not been applying an orthodox or classical theory of Islamic law however defined. It has determined that very few religious texts can be used as a basis for determining universally applicable principles of the *Sharī'ah*. It also places great emphasis on determining that the law in question will promote justice and human welfare, thus taking a more contextual approach than what Sālih has allowed for. Sālih also asserts that any attempt to deny the universal validity and application of

¹⁵³ Yūstīnā Sālih, 'Law, the Rule of Law and Religious Minorities in Egypt' (2004) 8 (4) *MERIA Journal*.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

the *Qur'ān* and the *sharī'ah* in Egypt has had detrimental consequences.¹⁵⁶ Here Sālih is confusing two different concepts: the *sharī'ah*, the "path" that Muslims are obliged to follow which governs the Muslim community and the sources that can be used to determine this path, namely the *Qur'ān* and *hadīth*. The SCC would certainly affirm that the *Sharī'ah* is universally applicable as the basis of governing a Muslim community. However, it has not taken the view that the whole text of the *Qur'ān* is binding on all people across time and place, nor that the *hadīth* are largely binding. It does take into account the determination of contextual benefits and harms when determining if law is constitutional and it has determined only very few universal rulings. Furthermore, Lombardi has certainly indicated that the jurists of the court have some measure of judicial freedom to develop the law according to the principles that they uphold and thus there is nothing to indicate that any debate on legal methodology results in exile or being branded a heretic or apostate as she claims at one point in her text.¹⁵⁷

Sālih also asserts that the concept of the "*dhimmi*" population is being applied in Egypt, particularly with regards to personal status laws, and that this results in discrimination against non-Muslims.¹⁵⁸ Unfortunately the jurisprudence described by Lombardi does not address cases that have involved the constitutionality of personal status laws as applied to, for example, Muslims and Christians in Egypt. However other authors have addressed her concern. Dr. Nabīl Luqā Bibāwī, vice-chairman of the *Shurā* Council's Information and Culture Committee, responds that the *dhimmi* contract was officially terminated by the Khedive in 1856 when he issued a decision that non-Muslims should be accepted in state positions.¹⁵⁹ The related practice of non-Muslims paying the *jizyah* tax was also abolished at this time.¹⁶⁰ Dr. Bibāwī further asserts that Article XL of the Egyptian Constitution, affirming the equality of Muslims and non-Muslims in Egypt in terms of rights and duties, counters such a concept being applied again.¹⁶¹ Dr. Abd al-Mu'tī Bayyūmī, a member of the Islamic Research Academy, also suggests that the fact that there are different personal status laws for Muslims and Christians in Egypt, governing areas like marriage and inheritance, guarantees

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Nabīl Lūqā Bibāwī, 'Dr Nabīl Lūqā Bibāwī's response to AWR's questions on Yūstīnā Sālih's article on Article II of the Egyptian Constitution' (2005) 51 *Arab West Report* art. 51.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

their religious freedom.¹⁶² It is not discriminatory because these laws apply universally to all adherents of the respective religion which, he counters, a person adopts by choice.¹⁶³ Dr. Bayyūmī also asserts that there is no evidence, contrary to what Sālih claimed, that Egyptian law prevents a non-Muslim from testifying in court against a Muslim.¹⁶⁴ If such a law was based on an article related to the organization of the *sharī'ah* courts, as she claimed, it is worth noting that these courts have not existed in Egypt for more than 50 years now.¹⁶⁵

Secondly, another of Yūstīnā Sālih's main arguments is that the SCC does not operate independently from the executive and its interpretation of Article II is dependent on Egypt's leadership. Therefore, human rights can never be achieved in this context.¹⁶⁶ Lombardi provides evidence that Sālih is wrong on both these counts. With regards to the court's independence, Lombardi refers to a number of specific cases where the SCC has ruled against the government and found that laws were unconstitutional on the basis of incompatibility with the *sharī'ah*, even despite the government's protestations...¹⁶⁷ Indeed in the sixth article, two cases reviewed prior to 1993, the court found that half of the laws in question were inconsistent with the *sharī'ah*¹⁶⁸ and after 1993, the court still found laws unconstitutional.¹⁶⁹ Lombardi does concede that the court is treading cautiously in this regard and may be giving some measure of deference to the executive.¹⁷⁰ However, it is clear that the SCC is working with some measure of independence contrary to what Sālih alleges. Sālih's assumption that human rights cannot be protected in this context is also premature. Lombardi notes that the SCC's analysis has, in some cases, explicitly made reference to international human rights when considering what the concept of welfare means in the context of determining the goals of the *sharī'ah*.¹⁷¹ Specifically, Lombardi quotes rulings of the court that have found in favor of

¹⁶² Abd al-Mu'tī Bayyūmī, 'Response to AWR's questions on Yūstīnā Sālih and Article II of the Egyptian Constitution' (2005) 51 Arab West Report, art 52.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Sālih, above n 133.

¹⁶⁷ Lombardi, above n 1, 177.

¹⁶⁸ Ibid 198.

¹⁶⁹ Ibid.

¹⁷⁰ Lombardi, above n 1, 177.

¹⁷¹ Ibid 239.

the rights of women,¹⁷² considered the best interests of the child¹⁷³ and upheld the right to own property.¹⁷⁴ These decisions are consistent with Egypt's international human rights obligations and show that it is possible to both implement the rules of the *Sharī'ah* and uphold human rights principles.

Thirdly, Sālih claims that the SCC's interpretation of the *sharī'ah* is dependent upon the interpretation of those in leadership, presumably referring to the justices of the court.¹⁷⁵ The fact that the court, through its Article II jurisprudence, is working to uphold its own precedents and the liberal constitutional principles it has already affirmed through its rulings, shows that the court's law is, in fact, more stable than what Sālih claims. Secondly, Sālih suggests that the judges are only making subjective judgments because there are no criteria to establish what constitutes, for example, a violation, and therefore judgments tend to be based only on governmental decisions.¹⁷⁶ There are a couple of assumptions that need to be countered in this statement. Firstly, that the decision making of the court is based on some subjective considerations is a negative thing. This is not necessarily the case. Lombardi has affirmed that the court is looking beyond the universal rulings of the *sharī'ah* to consider what kinds of social results the rulings seem to promote¹⁷⁷ and that these interpretative judgments have been used to promote human rights and liberal constitutional principles. These are positive outcomes as we have already noted. Moreover, in common law countries like America, Australia and Britain, where codified law plays a minor role in the legal system compared to judge-made law, value judgments are regularly made as part of the decision making process. The exercising of discretion by justices does not therefore necessarily mean that the legal system is corrupt, as Sālih seems to imply. Secondly, it does not automatically follow that if the judges in the SCC are making subjective judgments, these are being made according to the government's wishes. On the contrary, Lombardi notes that the SCC has never explicitly suggested that it has to defer to the executive in its reasoning.¹⁷⁸ Instead it has reviewed

¹⁷² Ibid 193, 235.

¹⁷³ Ibid 194, 208.

¹⁷⁴ Ibid 238.

¹⁷⁵ Sālih, above n 133.

¹⁷⁶ Ibid.

¹⁷⁷ Lombardi, above n 1, 193.

¹⁷⁸ Ibid 198.

governmental legislation aggressively¹⁷⁹ and worked to create a modern theory of Islamic law that is largely independent from governmental influences.

Finally, Sālih claims that Article II has important cultural ramifications for creating and sustaining power relationships in society and making groups from various backgrounds unable to attain equality. Although the cultural ramifications of Article II are somewhat beyond the scope of Lombardi's thesis, intuitively this claim is questionable. It is true that Egypt is a religious society, but this is one of the reasons why, in fact, Article II of the constitution was originally enacted. Lombardi and other authors¹⁸⁰ suggest that political groups, with considerable public support, were calling for greater Islamization of the law, particularly as a reaction to the earlier secular and colonial influences on its codes. Article II was a concession to this influence. It therefore is inaccurate to say that this provision has created and sustained the power relationships prevalent in Egyptian society.

Majdi Khalīl

Majdi Khalīl is another writer who strongly opposes Article II of the Egyptian Constitution. He shares some of the concerns of Yūsīnā Sālih, particularly in relation to the independence of the judiciary,¹⁸¹ which we have already discussed in relation to Sālih's arguments on this issue, and he also raises several further objections to the article. One of these is that the "ideological orientation" of the constitution provided by Article II clashes with the rights and freedoms guaranteed by it,¹⁸² particularly with the right to "individual freedom" enshrined in Article XLI of the constitution.¹⁸³ Indeed, he quotes, "the overall orientation of the legal system has been altered by the constitutional text that [makes] Islamic jurisprudence... the principle source of legislation."¹⁸⁴ A close examination of these claims shows that Khalīl is actually asserting a number of things. Firstly, that individual freedom is impossible in light of the influence of the *sharī'ah* on the constitution. Lombardi's analysis provides an alternative view, one which he has substantiated by analyzing the SCC's jurisprudence, not by claims alone. He argues, instead, that the court has upheld individual rights, for example, in the framework of

¹⁷⁹ Ibid.

¹⁸⁰ Bibāwī, above n 139.

¹⁸¹ Majdī Khalīl, 'Rights and Freedoms in the Egyptian Constitution' (2005) *Watani International*, June 26, 2006.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

determining what the concept of welfare entails.¹⁸⁵ Secondly, that Article II is inconsistent with the rest of the constitution. As we have already noted, the SCC's Article II jurisprudence has been conscientiously inline with the other liberal constitutional principles it has upheld¹⁸⁶ serving to reinforce this case law rather than to contradict it. Thirdly, that the influence of Article II has somehow changed the orientation of Egypt's legal system against Egypt's citizens.¹⁸⁷ Dr. Bibāwī's response to such a view is that Egypt's legal system is not as closed as this claim seems to suggest because Article II does not prohibit other sources of legislation being used.¹⁸⁸ One example is with regard to personal-status matters that apply to Copts - special legislation is applied.

Khalīl also asserts that Article II "goes against" other rights enshrined in international agreements, particularly in the areas of women's status, the rights of non-Muslims and religious freedom.¹⁸⁹ In fact, freedom is only allowed to the extent that the *Sharī'ah* permits.¹⁹⁰ As already noted in relation to Sālih's claims about human rights, the jurisprudence of the court does not support this assertion. Lombardi instead insists that the SCC's Article II jurisprudence demonstrates that the court has been reluctant to consider any principles which violate the norms of international human rights.¹⁹¹ With regards to women's rights, in one decision, the court found that legislation prohibiting the *niqāb* in schools was constitutional¹⁹² and in another case, that women should be treated generously in cases of separation.¹⁹³ These decisions certainly do not reinforce the presumptions that many have about the *sharī'ah's* restriction of women's rights.

One final claim that Khalīl makes is that Article II is often misused by the courts to make, presumably, questionable decisions. He makes reference to a certain case, in this regard, where

¹⁸⁵ Lombardi, above n 1, 240.

¹⁸⁶ Ibid 198.

¹⁸⁷ Khalīl, above n 161.

¹⁸⁸ Bibāwī, above n 139.

¹⁸⁹ Khalīl, above n 161.

¹⁹⁰ Ibid.

¹⁹¹ Lombardi, above n 1, 257.

¹⁹² Ibid 193.

¹⁹³ Ibid.

two persons were separated due to a court verdict.¹⁹⁴ Khalīl does not reference the decision in question so it is difficult to determine whether his analysis of Article II's impact on the judges' reasoning was accurate or even if it was the SCC who issued the decision. However, the case does not appear to be in line with the constitutional court's other determinations. The principle of the right of a person to choose his/her spouse,¹⁹⁵ a key human rights principle regarding marriage, has been upheld in other judgments so we cannot assume that this claim is necessarily correct.

‘Adil Jindī

‘Adil Jindī, a French-based writer on Middle East issues, also briefly discusses Article II in his discussion of “The Islamization of Egypt over the Past Few Decades”, stating that the article “provides the legal basis to discriminate against and to marginalize the Copts in their own homeland.”¹⁹⁶ Like Sālih, Jindī argues that Copts are being subjected to *dhimmī* status because of the operation of the *Sharī'ah* in Egypt.¹⁹⁷ As discussed in relation to Sālih's similar objection, the concept of *dhimmī* status is no longer applied in Egypt, therefore this argument does not support his view that Copts are being discriminated against and marginalized on this basis. More broadly, Jindī does not substantiate the claim that Article II is being used to discriminate against non-Muslims. Certainly the constitution upholds that Muslims and non-Muslims are equal in terms of rights and duties in Egypt¹⁹⁸ and the SCC seems to be applying Article II with care to uphold principles of justice and human welfare. Without a closer examination of Article II jurisprudence that particularly applies to the situation of non-Muslims in Egypt, this argument cannot be substantiated.

Egyptian views

It is conceivable that the previous three writers, all currently based in the West, have been influenced by the anti-Islamic sentiments now prevalent in the region and, as such, have taken an unnecessarily dark view of the influence of Article II on the Egyptian legal system. The contrast is particularly stark when considering the well-reasoned arguments of Lombardi,

¹⁹⁴ Khalīl, above n 161.

¹⁹⁵ Lombardi, above n 1, 255.

¹⁹⁶ ‘Adil Jindī, ‘The Islamization of Egypt over the Past Few Decades’

¹⁹⁷ Ibid 8.

¹⁹⁸ Article XL

compared to the often unreferenced or unsubstantiated assertions, assumptions or reactions made by these three authors. Indeed intellectuals in Egypt take a more positive stance on the issue of Article II, including scholars from both Coptic and Muslim faiths. Bibāwī's perspective on the influence of Article II, as a prominent Coptic figure, is important in this regard. He rejects the claims put forward by Sālih and argues that the application of the *Sharī'ah* does not affect the rights of Copts.¹⁹⁹ Although he is just one Coptic voice, it is worth noting that his stance stands contrary to the arguments put forward by Sālih, Khalīl and Jindī. As an Egyptian and a Copt, his view certainly must be given some consideration.

Conclusion

This paper has aimed to clearly describe the method that the Supreme Constitutional Court, the court which carries the mandate for determining how Article II of the constitution is applied in Egypt, uses to determine how the *sharī'ah* applies in Egypt. Contrary to vocal Western voices, the analysis provided by Lombardi suggests that the court has developed a methodology that draws from various classical and modern Islamic theories of law which is being used to make decisions that promote justice and welfare in Egypt and to uphold international human rights norms. Although the court is still young, its jurisprudence thus far does not indicate that it is using the *sharī'ah* to curb the rights of non-Muslims or to intimidate those who question its methodology nor is it operating as a de facto arm of the executive. The views of prominent figures in Egypt are much more positive about the operation of *sharī'ah* law in Egypt and need to be given weight in the debate about Article II of the Constitution.

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- 2) Nabīl Lūqā Bibāwī, 'Dr. Nabīl Lūqā Bibāwī's response to AWR's questions on Yūstīnā Sālih's article on Article II of the Egyptian Constitution' art 51. week 51, AWR 2005
- 3) 'Adil Jindī, 'The Islamization of Egypt over the Past Few Decades Egyptian nationalism and patriotism have receded, leaving space for Pan-Islamism. The real victims of the drastic transformation are undoubtedly the Copts who have been made to endure a de-facto *dhimmī* status' art. 31, week 23, AWR 2006
- 4) Majdī Khalīl, 'Rights and Freedoms in the Egyptian Constitution' (2005) *Watani*

¹⁹⁹ Bibāwī, above n 139.

International, June 26, 2006.

- 5) Clark B. Lombardi, 'State law as modern Islamic law in Modern Egypt: The incorporation of the *sharīah* into Egyptian Constitutional Law' (2006).
- 6) Yūstīnā Sālih, 'Law, the Rule of Law and Religious Minorities in Egypt' (2004) 8 (4) *MERIA Journal*.

Second: Commentary on Yūstīnā Sālih's Article

Arab-West Report, December 20, 2005

Title: Questions concerning Yūstīnā Sālih: Article II of the Egyptian Constitution

Author: Cornelis Hulsman

A list of the questions submitted to Egyptians, concerning the article, written by Yūstīnā Sālih on Article II of the Egyptian constitution.

[Editor: With an update about what happened to these questions in January and February 2006]

These questions were formulated, together with a one-page text explaining why there is a need to respond to the Yūstīnā Sālih article, in February 2005, with the help of Prof. Dr. Mike Fowler, US human rights lawyer and former professor of mass communication at the AUC. Throughout 2005, they were presented to many of Egyptian specialists, but only two responded, Dr. 'Abd al-Mu'tī Bayyūmī and Dr. Nabīl Luqā Bibāwī. We are very grateful to them.

Human rights lawyers, some working for Egyptian NGOs, others known for their media comments on similar subjects were asked to respond, but never actually responded. Prominent Egyptian authorities were also asked for a response, but again no response was forthcoming which AWR found disappointing.

The only conclusions we can draw from the non-responses throughout the year are that:

- It is extremely hard to get responses to questions for which more is needed than a personal opinion. Egyptians, including some of the experts we have consulted, speak frequently

about western distortions, but they need to make an effort to actually respond to specific questions. Some do while many others do not.

- Language is often an obstacle. Many of the experts consulted are experts in Egyptian law, but do not read English and thus, in July 2005, we translated the questions into Arabic. A problem remains that they were not able to read the original English article of Yūstīnā Sālih or other publications in the West and therefore probably hardly realized the impact of such unchallenged publications in the West.
- We have not been able to find relevant scholarly articles in Arabic dealing with the questions by Yūstīnā Sālih or other western authors. Egyptian scholars would do well to address questions, even if they respond in Arabic, because at least then, translations could be made.

Egypt and Islam are definitely often misrepresented in western articles and reports, but Egyptians in general, are doing an extremely poor job in responding to this.

Questions:

Questions about Article II of the Egyptian constitution:

- 1) Could you provide me with the text of Article II in the Egyptian constitution and how that text should be explained?
- 2) Since which year has the Egyptian constitution referred to the *Sharī'ah*? Have the formulations referring to the *sharī'ah* in the constitution changed since it was first mentioned in the constitution and if so, why?
- 3) When and why was the amendment made in Article II of the constitution, changing from the *sharī'ah* as "a main source of legislation" to "the main source of legislation." How has this change affected legislation?
- 4) Is the explanation correct that Article II means that "the principles of the *sharī'ah* are the main source of legislation." Who decides what the principles of the *sharī'ah* are?
- 5) It is correct that proposed laws, before they become law, should be compared to the principles of *sharī'ah* and should not be in violation with its principles? Who decides whether proposed new laws are not violating Article II of the constitution?
- 6) Sālih explains that, for the purpose of her article, she uses "a traditional" conception of the *sharī'ah*. Is this the conception the Egyptian judiciary uses when Article II of the constitution is involved? She later writes that Egypt's Supreme Constitutional Court is "seen to be adopting

a midway position between the traditional conceptions of Islam and a more liberal interpretation." What is the interpretation of the *sharī'ah* used?

7) Sālih refers to "traditional *sharī'ah* scholars" who refer to believers of other faiths as accepted, but not equal to Muslims. Is this the position of authorities that decide what the principles of the Sharī'ah are?

8) The concept "accepted, but not equal" is linked to the *dhimmī* status. Since when has the use of the concept of *dhimmī* been abolished and how did this affect Egyptian legislation?

9) Many authors refer to the concept of citizenship, all citizens being equal before the law (Article VIII of the constitution). How is the concept of citizenship used in Egyptian legislation and jurisprudence? Do you have examples of how this concept has been used in Egyptian legislation?

10) Sālih states that Article II of the constitution is inconsistent with other articles providing equality (Article XL), freedom of belief (Article XLVI) and equal opportunities for all Egyptians (Article VIII). How do you explain this?

11) The 1923 constitution stipulated that "freedom of religious belief is absolute." Farah Fūdāh has argued that freedom of religious belief, following the acceptance of Article II of the constitution, has become a very limited concept. How did the interpretation of articles on freedom of belief change after the constitution started referring to the *sharī'ah* as the main source of legislation. Could you provide examples?

12) Is there a hierarchy in the articles of the Egyptian constitution? Meaning that, if Article II and Articles 40 and 46 (regulating freedom of religion and religious practice) conflict in a particular application, that Article II should dominate? Or there is no hierarchy of articles in the constitution, all articles in the constitution being equal and thus no law can violate any of the articles in the constitution?

13) Could you provide examples of jurisprudence in which judges had to weigh both Article II and Articles 40 and/or 46 and/or 8 of the constitution?

14) Sālih notes that Egyptian law upholds the principle of equality before the law regardless of the circumstances and legal status of people, but she interprets Case no. 4 of 1971 before the Supreme Court [regarding different personal status laws for Muslims and Christians and therefore violating Article VIII of the constitution regarding the principle of equality] as an example to show that there are loopholes. How does Egypt draw the line between the principle of equality and public policy or interest?

International treaties ratified by Egypt:

15) How should Egyptian reservations upon the ratification of the International Covenant on Civil and Political Rights in Egypt be explained? This covenant, which gave legal force to the Universal Declaration of Human Rights, obliged countries to pass laws to protect them and excise laws that violate them. Egypt attached a statement "Taking into consideration the provisions of the Islamic *sharī'ah* and the fact they do not conflict with the text annexed to the instrument, we accept, support and ratify it." How have Egyptian legal scholars interpreted this statement? Do they read it to mean what it appears to say, that the *Sharī'ah* and the UN Universal Rights are compatible? Or that Egypt accepts the Universal Rights only to the extent that they do not contradict the *sharī'ah*?

Questions about laws other than the Egyptian Constitution:

16) Several articles in Egyptian law are made to protect the country from religious unrest. How does Egyptian law balance the protection of society (community) and individual freedoms?

17) Article 98F of the Penal Code prohibits citizens from ridiculing or insulting any of the officially recognized religions or inciting sectarian strife. Could you provide jurisprudence of how this law has been applied in practice? What cases are known that show how judges have applied this law? Article 98F was invoked against *Al-Naba'* newspaper that published an article in June 2001 alleging sexual misconduct in a Coptic Orthodox monastery. How was this article used? Do you have the reference to a case number and could you provide other examples?

18) Article 160.2 prohibits sabotage and defacing places of worship that are designated for religious practice. Could you provide jurisprudence of how this law has been applied in practice? What cases are known that show how judges have applied this law?

19) Article 161.1 makes deliberate alterations in the publication of the text of a holy book whether it is the *Qur'ān* or Bible punishable by law. Article 161.2 prohibits ridiculing any religious ceremony. Could you provide jurisprudence of how these laws have been applied in practice? What cases are known that show how judges have applied these laws?

20) According to Egyptian civil law, clauses 135 and 136 of the official government communiqué number 5 in 1970, no one was allowed to convert to Islam under the age of 16. Is it correct that item 2 of Civil Law no. 12, 1996 stipulates that the minimum age for conversion of non-Muslims to Islam is 18?

21) How do Egyptian courts deal with cases of conversion by non-Muslims to Islam? Are there cases you could refer to? Or do such cases not come before court? If so, how are they legally dealt with?

22) The case of Wafā' Costantine has resulted in a discussion about the religious counseling sessions before someone formally converts? Are these religious counseling sessions mentioned in laws or in administrative regulations?

23) The Egyptian High Court ruled on April 8, 1980 that the *sharī'ah* would need to be applied in cases of religious conversion: "In so far as the person mentioned is an apostate from the sublime Islamic law, he no longer has any civil rights from the government with all its institutions." [Reiss, 1998, 295; MacLaren, Religious Freedom, 5] Are there other, more recent, rulings about cases of religious conversion?

24) What is the implication of "losing one's civil rights?" Is that person deprived of the right to take care of his or her underage children? If the man converts, but the woman remains Muslim, can the Personal Status Court rule the couple divorced? Does the convert from Islam lose the right to inherit and the right to make contracts, as well as his or her right to move freely? [MacLaren, Religious Freedom, 5].

25) Inheritance laws in Egypt are based on the *Sharī'ah* regardless of one's religion. According to the International Religious Freedom Report of 2004, "Muslim female heirs receive half the amount of a male heir's inheritance, while Christian widows of Muslims have no inheritance rights. A sole female heir receives half her parents' estate. The balance goes to designated male relatives. A sole male heir inherits all his parents' property."

26) Case No. 74 of 1997 supported the appeal of a Christian woman who wanted the maximum age of custody of the *Sharī'ah* to be applied on her child because it was higher than the maximum age in Coptic canonical law. The court accepted after it had consulted Pope Shenouda. Sālih explains this as a politically-motivated application of the law, but one in favor of a non-Muslim. How do Egyptian judges rule in politically and religiously sensitive issues? How do they take those sensitivities into account?

27) What are the current laws regulating building and restoring houses of worship? Do Egyptian laws and regulations differ between building and restoring mosques and churches?

28) Is it true that the "Hamāyūnī" line is no longer in force? Since when or which decision or law?

Sharī'ah

29) What is, apart from Article II of the Egyptian constitution, the place of the *Sharī'ah* in Egyptian legislation? To what extent does the *Sharī'ah* apply to non-Muslims in Egypt? Sālih states that non-Muslims have no individual rights concerning inheritance and guardianship in cases of mixed marriages. Is this true and could you explain the Egyptian position on this?

30) Sālih writes that "the testimony of a non-Muslim against a Muslim is not acceptable in a court of law." Sālih's text does not refer to civil law, but to Article CCLXXX of the Decree on the Organization of the *Sharī'ah* courts.

a) Are the testimonies of non-Muslims against Muslims or vice versa in all circumstances equal before civil courts?

b) Do *sharī'ah* courts exist or are the courts she refers to only dealing with personal status issues. If they exist, what is the place of *sharī'ah* courts in Egypt? What is their authority and what issues do they rule about?

Third: Hānī Labīb, AWR's Managing Director, "Article II and Freedom of Belief"

Article II of the Constitution, which reads that "Islam is the religion of the state, Arabic its official language and the principles of Islamic *sharī'ah* are the main source of legislation," is one of the most controversial constitutional articles when it comes to freedom of belief in Egyptian society or when handling Egyptian Christian citizens' cares and problems.

Some have reduced a large part of the arguments over the constitutional amendments of 2007 or discussions about the constitution after January 25, 2011 only into Article II.

The arguments over Article II have actually outnumbered all others on the 34 constitutional articles amended in 2007 or the arguments related to the new constitution after January 25, 2011.

History²⁰⁰

It might be useful to give a historical synopsis about Article II and the freedom of belief in consecutive Egyptian constitutions.

Article II in Egyptian Constitutions from 1923 to 1970

Constitution	Relevant Articles
1923 Constitution	<p>Article III: Egyptians are equal before the law. They shall have equal civil and political rights and observe public obligations without discrimination on the bases of origin, language or religion.</p> <p>Egyptians are exclusively entrusted with public positions, civil or military while foreigners shall be barred from such posts unless otherwise stated by the law.</p> <p>Article XII: Freedom of belief is absolute.</p> <p>Article XIII: The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory with no prejudice to public order and morals.</p> <p>Article CXLIX: Islam is the religion of the state and Arabic its official language.</p>
1930 Constitution	<p>Article III: Egyptians are equal before the law. They shall have equal civil and political rights and observe public obligations without discrimination on the bases of origin, language or religion.</p> <p>Egyptians are exclusively appointed to public positions, civil or military, while foreigners shall be barred from such posts unless otherwise stated by the law.</p> <p>Article XII: Freedom of belief is absolute.</p> <p>Article XIII: The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory with no prejudice to public order and morals.</p> <p>Article CXLIX: Islam is the religion of the state and Arabic its official language.</p>

²⁰⁰ Nijād al-Buraṭī, Research: Freedom of Belief in the Egyptian Constitutional System, training workshop for lawyers on: the legal protection for the freedom of belief, Sharm al-Shaykh 14-17 of September 2005.

1953 Constitutional Declaration	Article IV: Freedom of belief is absolute. The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory with no prejudice to public order and morals.
1956 Constitution	<p>Article III: Islam is the religion of the state and Arabic its official language.</p> <p>Article XLIII: Freedom of worship is absolute. The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory with no prejudice to public order and morals.</p>
1958 Constitution	The constitution did not deal with the issue of freedom of belief.
1964 Constitution	<p>Article V: Islam is the religion of the state and Arabic its official language.</p> <p>Article XXIV: Egyptians are equal before the law. They shall have equal civil and political rights and observe public obligations without discrimination on the bases of origin, language or religion.</p> <p>Article XXXIII: Freedom of worship is absolute. The state shall protect the free practice of religious rituals and beliefs according to applicable norms in the Egyptian territory without prejudice to public order and morals.</p>
1971 Constitution	<p>Article II: Islam is the religion of the state and Arabic its official language. The principles of Islamic sharī'ah are the main source of legislation. (Amended in accordance with the results of the referendum over the constitutional amendment held on May 22, 1980).</p> <p>Article XL: Egyptians are equal before the law. They shall have equal civil and political rights and observe public obligations without discrimination on the bases of origin, language or religion.</p> <p>Article XLVI: The state shall guarantee the freedom of belief and protect free practice of religious rituals.</p>

There were several draft constitutions that dealt with religion and the freedom of belief²⁰¹ as follows:

Draft constitution	Relevant Articles
1954 draft constitution	<p>Article XI: Freedom of belief is absolute. The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory without prejudice to public order and morals.</p> <p>Article CXCV: Islam is the religion of the state and Arabic its official language.</p>
People's Committee for Constitutional Reform	<p>Article II: Islam is the religion of the state and Arabic its official language. Islamic sharī'ah is the main source of legislation. For non-Muslims, their rituals shall be effective on practice of religious rituals, personal status affairs and election of their spiritual leaders.</p> <p>Article XXXI: Freedom of belief shall be protected. The state shall guarantee the free practice of religious rituals within the boundaries of the law.</p>
Dr. Muhammad 'Asfūr's Draft	<p>Chapter 1 (nation and state): Egypt is part of the Arab nation. Islam is the religion of the state, Arabic its official language and principles of Islamic sharī'ah are the main source of legislation.</p>
Al-Ghad Party's 2005 Draft Constitution	<p>Article I: Egypt is a parliamentary republic with full sovereignty. The state is a free, independent democracy. Islam is the religion of the state, Arabic its official language and Islamic sharī'ah is the main source of legislation.</p> <p>Legislations shall guarantee citizens' freedom of opinion, expression, work and earning. They shall also guarantee all freedoms and rights stipulated in the Universal Declaration of Human Rights. The people are the source of authorities, exercise and protect their sovereignty, safeguard their national unity, seek African, Arab and Islamic unity and believe in the values of peace and cooperation with all peoples of the earth.</p> <p>Article XIV: Freedom of belief is absolute. The state shall protect the free practice of religious rituals and beliefs according to applicable norms in Egyptian territory without prejudice to public order and morals.</p>

²⁰¹ 'Isām al-Islambūlī, Study: Religious Identity of Egypt Is Clear in all of its Old and Modern Constitutions, *al-Karāmah Newspaper*, 14th of February 2006 – Issue No.19, Cairo

In 1980,²⁰² President Anwar al-Sādāt responded to demands and pressures by Islamist movements in return amending the article from “six-year term” to “more terms”. The phrase was added to allow him to remain in power as long as he wanted.

The amendment of Article II was supposed to be referred to a People’s Assembly committee composed of Albert Barsūm, the former Minister of People’s Assembly Affairs, Hannā Nārūz, a lawyer and member of the Bar Association council, and another Coptic person.

Counselor Hāmid al-Jamal attended the committee meetings in his capacity as the legal advisor to the People’s Assembly in order to prepare the report which would be sent to the People’s Assembly so the amendment might be approved before being put to a referendum.

The three Copts objected to the addition of two letters alif and lām, which denote the definite article in Arabic, to the word *masdar* (source). They based their objection on books written by some scholars, including Ibn Taymīyah, along with old interpretations that stated Copts were second-class citizens.

Dr. Sūfī Abū Tālib, the then-Speaker of the People’s Assembly, told them, “You are uttering words that have no basis in the *sharī’ah* or in Islam. The principle is ‘what we get, you get, and what we should do you should do’. What you are saying is not applicable when citing the principles of Islamic *sharī’ah*.” The three Copts opposing the amendment, however, withdrew and a crisis erupted. When President Sādāt entrusted Major General Muhammad al-Nabawī Ismā’īl, the Minister of Interior at the time, to probe the issue.

Ismā’īl asked Counselor Hāmid al-Jamal who replied that the addition of the definite article in the Arabic text did not change the matter and that the Islamic *sharī’ah* would not be implemented by the force of the articles of the constitution, but rather by the Egyptian legislator’s will.

In other words, when a law is being drafted, there has to be reference to the *sharī’ah* in all doctrines and selection of the applicable provisions to be enacted in the form of laws such as inheritance, wills and endowments. Accordingly, the Copts’ fears were unjustifiable given that

²⁰² Interview with Counselor Hāmid al-Jamal: Coptic Fears Are Illusionary! *al-Ahrām Newspaper*, 1st of April 2011, Cairo.

the *sharī'ah* would not be applied by judges or anyone else, but rather through man-made laws conforming to the principles agreed upon by scholars²⁰³.

Counselor Hāmid al-Jamal wrote a report explaining this issue decisively and clearly to emphasize that this article would not be interpreted separately from the rest of the constitution articles pertaining to equality and the rule of law. President Sādāt agreed.

Islamists wanted to put the wording as follows: "...and the general principles of Islamic *sharī'ah* are the main source of legislation". Sādāt refused this on the grounds that Egypt was a state of law²⁰⁴.

Key points²⁰⁵

In this regard, a number of principles have to be highlighted in the form of introductions for discussion on the arguments sparked by Article II of the constitution like the case of the 2007 constitutional amendments and the constitutional declaration after January 25, 2011.

First Point: The 2007 constitutional amendments envisaged the amendment of Article I of the constitution, which read that the "Arab Republic of Egypt is a democratic state based on citizenship. The Egyptian people are part of the Arab nation that works toward the realization of its comprehensive unity."

This is also related to the amendment of Article V stating, "The political regime of the Arab Republic of Egypt is based upon a multi-party system within the framework of the basic principles of the Egyptian society mentioned in the Constitution. Political parties shall be organized by the law. Citizens have the right to form political parties according to the law and no political activity shall be exercised or political parties formed on the basis of religion or on gender or racial discrimination."

²⁰³ Interview with Counselor 'Ādil Farghālī: Former Head of the Administrative Court of Justice Uncovers his Secrets (1-2), *al-Shurūq al-Jadīd Newspaper*; 5th of July 2011 – Issue No. 885, Cairo.

²⁰⁴ Interview with Counselor Hāmid al-Jamal: Coptic Fears Are Illusionary! previous source.

²⁰⁵ Hānī Labīb, Study: Article II...Political and Not A Constitutional Debate! *Rose al-Yūsuf Newspaper*, 27th of March 2007, fourth monthly issue, Cairo.

This amendment banned the mixing of religion into politics and promoted citizenship as a basic principle to avoid the political, economic, social and religious freedoms for all Egyptian citizens being restricted by the Islamic *sharī'ah* through interpretations that are a far cry from true religious teachings.

The amendment did not oppose that religion is a personal relationship between a citizen and his/her beliefs. Thus, the constitution and laws remained the general framework capable of drawing the features of Egypt's future.

The civil nature of the constitution established the system of individual and collective rights of all Egyptians without prejudice to their beliefs and religions.

Second Point: The argument about Article II, which was not originally proposed in the first place among the 2007 amendments, gave birth to many perspectives considered as political and ideological scenarios regarding Article II.

A camp of Egyptian Muslim and Christian intellectual and political elite along with some Christians refusing Article II or any other texts involving religious content called for removing it completely from the constitution. This group linked its cancellation to entrenching citizenship and argued that the amendment contradicted other constitutional texts and should not have existed in an integrated constitution.

The opposite camp, mainly the Muslim Brotherhood, Salafīs and the al-Jamā'ah al-Islāmīyah, vehemently supported this article and said its omission from the constitution would mark the beginning of sedition within the Egyptian society. This team was more inclined to emphasize that Article II did not impinge upon any of the Egyptian Christian citizens' rights.

A third group called for amending the constitutional article by offering some alternatives which included adding Christianity as the state's official religion or stating that the purposes of the *sharī'ah*, the divine faiths and the Universal Declaration of Human Rights were the main sources of legislation. The third proposed alternative was that the principles of Islamic *sharī'ah*, Christianity and the international conventions on human rights would be the main sources of legislation.

A fourth group viewed that the problem was not actually in the constitutional texts inasmuch as in the use of Article II for some political gains, consequently resulting in the discrimination, exclusion and marginalization of Egyptian Christians.

Third Point: Article II of the constitution has been politically used by some movements in issuing *fatwás* and controversial *ijtihāds* that have nothing to do with true Islam. Accordingly, there are fears that in the future this article would be a source for sedition and sectarian strife.

For example, Article II was used for announcing that killing Dr. Nasr Hāmid Abū Zayd was a lawful act because he had abandoned his Muslim faith and that he must be separated from his wife Dr. Ibtihāl Yūnis by a court decision in what was perceived as literal and random application of the constitutional text.

The Egyptian society now is suffering from sectarian tension based on discrimination and fanaticism, along with other violations. This could take place through the exploitation of Article II for committing other violations. The real problem is not basically whether or not to consider religion as the reference for the Egyptian state but rather in the state's interference in individual lives and beliefs.

Basic Facts

Article II was not originally included among the amendments proposed by former President Husnī Mubārak to the People's Assembly and the Shūrā Council in 2007 or afterwards in the constitutional declaration which followed the January 25, 2011 revolution.

It was proposed to amend Article I by stressing as a constitutional text the principles of citizenship, equality and non-discrimination among Egyptian citizens given that Article I is the main theme of the constitution. Moreover, the amendment of Article V would guarantee of civil state.

The constitution, before the 2007 proposals, did not consider Article II as the sole source, but rather a main source of legislation, which means there were other sources. The wording of the constitutional text of Article II is addressed to the legislators and not to judges in courts nor to

the people in general and that is why it was not translated into man-made laws, but it was meant to guide legislators to observe the principles of Islamic sharī'ah when drafting laws²⁰⁶.

The Muslim Brotherhood, Salafists and al-Jamā'ah al-Islāmīyah have managed to lure some Christians into discussing Article II by assuring them of their right to have a political entity representing their group, nourishing fears among many Christians and prompting some to call for canceling Article II. It has been an attempt to drag public opinion to a debate over this detestable sectarian issue.

The system of citizenship in the way it is stated in Article I goes beyond talking about Christians and Muslims in a larger and more comprehensive sphere to buttress political, cultural, social, economic health and environmental rights for all Egyptian citizens through emphasizing individual and collective rights.

The principle of citizenship, according to the text of Article I, does not contradict religion or the practice of religious rites. It is considered a constitutional guarantee for equality in rights and compliance with obligations for establishing the future of the Egyptian civil state.

Examples of Arguments:

Here are some examples of sophist sectarian arguments which revolve around Article II of the constitution like an e-mail sent by the Hiwar Centre for Development and Media, indirectly affiliated to the Muslim Brotherhood group, titled “Together, We Collect 10 Million Signatures to Keep Article II of the Constitution.”

The message reads, “To all those who are keen to maintain the stability of our beloved Egypt. A group calling itself, Coptic and Muslim Intellectuals, seeks to launch a front bearing the names of one million Copts and aims at omitting the Islamic sharī'ah article from the constitution under the pretext of establishing the principle of citizenship, a matter which makes us, who are concerned with the stability of our beloved Egypt, refuse this call and collect 10 million signatures through the internet to adhere to Article II of the constitution which stipulates that Islam is the main source of legislation. Muslims constitute well over 90% of the

²⁰⁶ According to the statements of Dr. Mufid Shihāb, *Nahdit Misr Newspaper*, 25th of February 2007, Cairo.

population and all countries' constitutions and laws are drafted in accordance with the majority's beliefs.”

This statement was signed by an Egyptian journalist.

The cited statement envisages bargaining and some sort of incitement to get involved in sectarian arguments. No one knows who these intellectuals are. It is very serious to promote such messages which voice, in one way or another, the Brotherhood-leaning center's convictions. The type of citizenship propagated by the Muslim Brotherhood in their orientations for political purposes before the public opinion does not admit the group's ambiguous views regarding the issue of majority and minority.

Citizenship, after all, is a package of political, cultural, economic, social and health rights within the framework of personal and collective rights. It is not, by any means, an argument about the predominance of the majority over the minority²⁰⁷. This has to do with some calls to transform Egypt into a religious state.

Remarks on Article II

The Muslim Brotherhood, Salafists and al-Jamā'ah al-Islāmīyah exploited the opportunity of discussing any constitutional amendments in order to promote their beliefs and send certain messages, capitalizing on opportunities and circumstances. This appears clearly in limiting the discussions about constitutional amendments to focusing on the amendment of only Article V, which bans the setting up of any party on religious basis as well as keeping Article II unamended. There was an attempt to push Egyptian Christians and public opinion into discussing this sectarian topic.

The Muslim Brotherhood, Salafists and al-Jamā'ah al-Islāmīyah are considered one of the main reasons for the cited anxiety of some Christians in Egypt about keeping Article II unamended. These concerns make sense in light of the ongoing evasions by political Islam movements that tamper with the nation's destiny by circulating²⁰⁸ that Article II allows the setting up of parties on a religious basis, in direct reference to their goal to have a political

²⁰⁷ Model of a statement by Mamdūh Ismā'īl (lawyer of the Islamic groups) on 8th of February 2007.

²⁰⁸ *Al-Khamīs Newspaper*, 22nd February 2007, Cairo. Statements for each of: Ahmad Abū Barakah and *Shaykh* Sayyid 'Askar (who belong to the bloc of the then-outlawed Muslim Brotherhood at the Egyptian parliament).

entity bearing a legal and legitimate status, sometimes accusing anyone arguing about Article II claiming that they are loyal to the CIA and world Zionism.

This way of thinking hijacks discussions even before they start. Add to this some contradictory attitudes regarding the citizenship of Egyptian Christians to the extent that no other sources could be added to Article II because the principles of Islamic *sharī'ah* are clearly stated in light of the fact that Islam is the religion of the majority in Egypt and that the principles of the *sharī'ah* comprise other important sources of legislation²⁰⁹.

Any observer of this argument may discover that Christian citizens in Egypt do not have fears about the implementation of Islamic *sharī'ah*, but rather are concerned about the practices of some political Islam groups, foremost the Muslim Brotherhood group.

The problematic and contradictory stances in statements by group members on satellite channels in terms of their stances regarding Egyptian Christians and the degree of their citizenship in accordance with the group's classification of patriotic concepts are evident.

The 2007 amendment of Article V of the constitution, stating the prohibition of the establishment of any political party on religious basis, completely complies with the amendment of Article I on one hand and keeping Article II intact on the other. The amendment stressed the civil nature of the Egyptian state away from involvement in the crisis of ruling in the name of God, and the usurpation of rights and perhaps killing in the name of God.

The amendment, in other words, enhances the rule of the law for all Egyptian citizens without any forms of discrimination consolidated by religious laws.

Perhaps historical experience is still vivid, whether involving the Church's rule and its dominance in Europe, or in the rule of political-Islam groups which promote themselves through religion until reaching power so as to rule in a way that is against the true spirit of religion.

²⁰⁹ Statements of Dr. Muhammad Salīm al-'Awwā, *al-Ahrām Newspaper*, 22nd of February 2007, Cairo.

There is no doubt that the religious state, which claims to derive its laws from heaven, is destroying the basis of patriotism and attachment to the land in favor of loose ideas.

Conversions to Islam and Christianity

Following up the issues of sectarian tension, one can easily notice that the issue of faith change, whether from Christianity to Islam or vice versa, is absolutely one of the most important reasons fueling sectarian sentiments over the past ten years. This has been linked by some people to Article II of the constitution.

It has been historically known that for Egyptian Christian citizens wanting to declare their conversion to Islam, they should take the following steps:

- Go to the police station to register a notice of the declaration of his/her conversion to Islam.
- Go to the Azhar to ask to embrace Islam.
- Return to the police station within the said person's precinct to obtain any criminal record.
- Go to the security department for sessions of advice and guidance for the said person with a Christian cleric.
- Postpone the issue more than once to grant the Christian clergyman the opportunity to convince the said person to give up plans of faith change.
- In case the said person insists on changing his/her religion and embracing Islam, he/she should then go to the notary to document the declaration of his/her conversion to Islam.
- Go to the civil registry agency to change ID data and all papers afterwards.

However, in the aftermath of the famous sectarian crisis that erupted over Wafā' Constantine, the wife of a priest, at the end of 2004, several rulings have been issued by the Administrative Judiciary Court relevant to freedom of faith change and, as a result, the previous measures were cancelled.

The court handed down a ruling on a legal principle which recognizes the unrestricted and unconditional freedom of belief as it stated that the principles of the Islamic sharī'a guarantee the freedom of belief for non-Muslims.

It added that the presence of legislative or statute rules or administrative instructions that stand in the way between anyone wanting to embrace Islam and the practice of his/her right to be Muslim violate the constitution and law now that Islam does not require documentation of conversion as it is sufficient only to recite the *shahādah* (creed) – There is no god but Allah, and Muhammad is the messenger of Allah."²¹⁰

The ruling stated that the Ministry of Interior shall not be obliged to issue official papers for Egyptian Christian citizens who converted to Islam and re-converted back to Christianity²¹¹. This ruling had several repercussions that have been used against freedom of worship in the Egyptian constitution on one hand and against the Egyptian system of freedoms in general on the other.

The court issued the reasons for its ruling (Tuesday, January 29, 2008) in rejecting Muhammad Hijāzī's request to change his faith and stated that he had no right to change the religious status on his ID from Muslim to Christian. Consequently, the Ministry of Interior was not obliged to change his religion on the identification card.

Rulings and Evidence

Based on the first Administrative Judiciary Court ruling issued in January 2006, the aforementioned seven steps regarding conversion from Christianity to Islam were summarized to only two steps as follows:

- Go to the police station to submit a report to this effect.
- Go to Azhar to submit a request for embracing the Muslim faith.

This consequently could cause successive problems. For example²¹² some cases in which an Egyptian Christian man marries an Egyptian Muslim woman or an Egyptian Christian woman marries an Egyptian Muslim man without changing the ID data might create several legal disputes in various aspects of life, like inheritance.

²¹⁰ *Al-Akhbār Newspaper*, 25th January 2006, Cairo.

²¹¹ *Rose al-Yūsuf Magazine*, 5-11 May 2007, Cairo.

²¹² Hānī Labīb, Article: Freedom of Belief between Islamization and Christianization, *Rose al-Yūsuf Magazine*, 25-31 March 2006, Cairo.

In addition to that, the ruling of the Administrative Judiciary Court has granted Egyptian Christian citizens the right to change their religion and embrace Islam and obliged state institutions to abide by such right while Christians who converted to Islam and re-converted back to Christianity are not granted the same rights. They may even face some problems in the civil registry offices to have their data updated.

The court ruling allows for enforcement in all similar cases while it deals with persons wishing to convert back to Christianity on an individual basis.

The April 2007 ruling contradicted past ones by the same court²¹³ under Chief Justice Counselor Fārūq ‘Abd al-Qādir, former vice-president of the State Council, who asserted that what has been settled in judicial circles is that Islamic fiqh (jurisprudence) showed that states with a Muslim majority could have its non-Muslim population live like any other ordinary citizen without being forced to change any of their faiths. The personal status law No.143 of 1994 guaranteed the issuance of an ID card and a certificate of birth for each and every Egyptian with his/her religion included. It is also an obligation imposed by the *sharī’ah*.

For those who are not allowed to indicate their faith on IDs such as Bahā’īs and others, there should be a classification of their data in order for the state to know about their status so that they may not obtain any legal positions not permitted by their faiths among the Muslim group).

This way the court established an important legal principle that state organizations must show the religion of all citizens in order to preserve their and the society’s rights. This verdict is related to the Bahā’īs, but what would be the case with Egyptian Christians?

Also, Counselor Fārūq ‘Abd al-Qādir, former chief justice of the Administrative Judiciary Court²¹⁴, said the ID reveals the civil status of citizens through the recorded data including their religions, names and dates of birth and those data must be credible.

²¹³ Hānī Labīb, Article: Rulings Against Freedom of Belief, *Rose al-Yūsuf Magazine*, 12-18 May 2007, Cairo.

²¹⁴ Ruling No. 34967 for year 59 L. on 11th of April 2006 (the Court of Administrative Justice).

Given the fact that the legislature was keen on the importance of such data, citizens were required to update their data included on their IDs if there were changes and it decided that citizens should be punished in case of any violation.

Former Grand *Shaykh* of the Azhar Dr. Muhammad Sayīd Tantāwī²¹⁵ stated that the religious status space on identification cards is to indicate the religious affiliation of citizens in their official papers and that this should cause no harm to anyone. He also said that freedom of belief is guaranteed for all.

The third ruling of the Administrative Judiciary Court on January 29, 2008 gave the reasons for its verdict saying that all Egyptian laws granted freedom of belief and practice of religious rituals as one of the citizens' rights and freedoms.

Also, constitutional texts have clearly guaranteed both freedoms. Whereas freedom of belief has been guaranteed without any restrictions, freedom of practicing religious rituals has been organized in a way to avoid violating public order and conduct.

The 1971 constitution follows the same course. Divine religions have been revealed by God Almighty according to a chronology which renders apostasy from the latest religion to the preceding one a deviation from accepted conduct. The clear verses of the Holy *Qur'ān* [Allow him who will believe, and allow him who will reject] are addressed to Muslims in order not to force non-Muslims to convert to Islam.

However, people who convert to and believe in Islam have exercised freedom of choosing his/her faith and they should not show any apostasy from Islam or else they would be considered apostates and manipulators of the Muslim religion.

The state has approved international conventions concerning freedom of belief and the right of the individuals to choose their faith. Hence, the court affirms its former verdict that Islam is the religion of the majority of the people of Egypt and that Egyptian legislation has instructed that

²¹⁵ Interview with the late Grand *Shaykh* of the Azhar, Dr. Muhammad Sayyīd Tantāwī, *al-Watan al-Yawm newspaper*, 19th of September 2006, Cairo.

the *sharī'ah* must be taken into consideration and that such conventions do not contradict Islamic teachings.

In this case, the court does not decide the issue of belief itself, but rather gives an administrative decision pertaining to the determination of religious status in the digital identification card.

This was confirmed by several Azhar scholars later on at the time²¹⁶, rejecting the change of an identification card of a person who left Islam and wanted to have his/her Christian faith recorded in the religious status section.

They explained that Islam is the higher and latest religion and it is not possible to switch to whatever faith that preceded it.

It was also agreed by Muslim scholars that there should not be a shift from the legislatively higher to the lesser. Therefore, the religion of the children should be that of the higher religion.

The previous three examples of the rulings of the Administrative Judiciary Court have gradually shifted the focus of the debate from the objective area of citizenship, with all the approved rights and freedoms, to a sectarian one that is biased in favor of one side over the other.

On both sides, each one believes that they are following the true faith and their faith is more accurate and honest and that this or that faith alone contains the absolute truth compared to the other faith.

This way of thinking referring to so-called higher or lesser religions was evident in the court ruling. But, this represents a violation of freedom of belief according to what was approved in Muslim references²¹⁷.

²¹⁶ Statement of Dr. 'Abd al-Fattāh al-Shaykh (member of the Academy of Islamic Research), *al-Ahrām newspaper*, 3rd of February 2008, Cairo.

²¹⁷ Hānī Labīb, Article, Freedom of Belief...the gap between constitutional text and court rulings, *Rose al-Yūsuf Magazine*, 9-15 February 2008, Cairo.

Constitutional Provisions

Article XL: All citizens are equal before the law. They have equal public rights and duties without discrimination among them on the basis of race, ethnicity, language, religion or creed.

Article XLI: Individual freedom is an established right and is preserved except *in flagrante delicto* cases. No person may be arrested, inspected, detained or have his freedom restricted in any way or be denied free movement except by an order required by prosecution investigations provided that the law shall determine the term of any investigative custody.

Article XLVI: The State shall guarantee freedom of belief and freedom of practice of religious rituals.

According to such articles, herein follows a summary of several rights:

- The right to have any form of religious beliefs and the right to change religion easily and without any problems.
- The right to the public display of religious beliefs, worship and participate in rituals and religious processions.
- The right of a citizen to be protected by the law and the judicial system against any possible violation of the individuals' right of free religious practice.
- The right to establish and maintain places of worship.
- The right to remove religious status space from all identification cards and official or non-official papers because they are considered discriminatory.

The text of Article XLVI of the Constitution is absolute. It renders freedom of belief and practice of religious rituals pertaining to such belief as absolutely free without any restrictions. It does not give the law or other legislative tools the right to restrict such freedom under the pretext of protection of public conduct or order.

The text underlines the advantage of Egypt as a multi-religion society. Egyptian society is currently suffering from sectarian tension, discrimination and fanaticism, in addition to some other violations.

Article XVIII of the Universal Declaration of Human Rights grants people the right to freedom of thought, opinion and religion, including the freedom to change religion or belief, and the freedom, either alone or with others, in public or private, to declare their religions or beliefs in teaching, practice, worship and observance.

Citizenship here means the establishment of a state of law in which all people are equal before the law as long as they are Egyptian citizens. Since Egyptian society has not, in fact, witnessed genuine freedom of religious belief²¹⁸, in light of the talk about the religious freedoms in Egypt²¹⁹, it would be useful if the future constitution clearly indicated the religious neutrality of the Egyptian state with regard its citizens²²⁰.

Religious-change Law²²¹

It is a proposed law submitted to the National Council for Human Rights and is based on freedom of belief as one of the basic human rights. Any citizen enjoys the right to change his/her religion in accordance with his/her personal conviction, but should not misuse such right for the mere obtaining a legal gain his/her original religion is hindering.

Religion can be changed through the judiciary (family court) to ensure that there will be no plans of manipulation to achieve certain purposes from the religious change.

I agree with the opinion that the issue of freedom of belief is the most important in the sectarian question²²².

Proposed Texts for Drafting Article II:

Most of these texts, issued after January 25, 2011, were either personal initiatives or general proposals.

²¹⁸ Dr. Mustafā al-Fiqī, Article: We Have Not Reached The Age of Freedom of Belief?, file (What if we ensure the freedom of belief?), *Rose al-Yūsuf*, 29th of August – 4 September 2009, Cairo.

²¹⁹ Dr. Ikrām Lamī, Article: Is Egypt A Suitable Place for Declaring the Religious Freedom? File, (What if we ensure the freedom of belief), *Rose al-Yūsuf Magazine*, 29th of August – 4th of September 2009, Cairo.

²²⁰ Dr. Murād Wahbah, Article: The Constitution Should Stipulate the Neutrality of the State Regarding the Religions, file (What if we ensure the freedom of belief), *Rose al-Yūsuf Magazine*, 29th of August – 4th of September 2009, Cairo.

²²¹ Dr. Hishām Sādiq and Dr. Fu'ād 'Abd al-Mun'im Riyād, draft law on (changing the religion) at the court, *al-Fajr Newspaper*, 17th September 2007 – Issue 119, Cairo.

²²² Salāh 'Īsā, Article: Freedom of Belief...the Most Important Papers of the File of Sectarian Issue, *al-Qāhirah Newspaper*, 25th January 2011 – Issue No.557, Cairo.

First: Personal Initiatives

* Dr. Samīr Tanāghū²²³:

“...and the legislator shall be inspired by the general principles of the Islamic sharī’ah”

* Dr. Salāh Fadl²²⁴:

“Egypt is a civil state, and the religion of its majority is Islam. The state shall recognize pluralism, tolerance, citizenship and equality. The Islamic sharī’ah is a main source of legislation.”

* Dr. Muhammad Salīm al-‘Awwā²²⁵:

“The Islamic sharī’ah is the main source of legislation and the recognized religions are Islam, Christianity and Judaism.”

* Counselor ‘Ādil Farghalī²²⁶:

“...the official religion is Islam which shall recognize and protect all religions.”

* Dr. Mu’taz ‘Abd al-Fattāh²²⁷:

“We, the citizens and masses of the people of Egypt, declare our full respect for all divine religions which proclaim that all people are worshippers of God. We assert our commitment that the principles of the Islamic sharī’ah be a main source of legislation with our full respect for other heavenly religions and the right of every Egyptian to choose his/her religion or belief without any prejudice to others' religions or beliefs.”

Second: General Proposals

* Cairo Centre for Human Rights Studies²²⁸:

²²³ Dr. Samīr Tanāghū, Study: Infidelity about Civil State in Egypt, *al-Shurūq al-Jadīd Newspaper*, 26th of July 2011 – Issue No.263, Cairo.

²²⁴ Interview with Dr. Salāh Fadl, *al-Misrī al-Yawm Newspaper*, 13th of March 2011 – Issue: 2464, Cairo.

²²⁵ Interview with Dr. Muhammad Salīm al-‘Awwā, *al-Misrī al-Yawm Newspaper*, 16th of March 2011 – Issue No.2467, Cairo.

²²⁶ Interview with Counselor ‘Ādil Farghalī (1-2), *al-Shurūq al-Jadīd Newspaper*, 5th July 2011 – Issue No. 885, Cairo.

²²⁷ Dr. Mu’taz ‘Abd al-Fattāh, Article: What I dream of in our constitution, *al-Shurūq al-Jadīd Newspaper*, 13th of August 2011 – Issue No. 924, Cairo.

²²⁸ Call sent by “the Cairo Centre for Human Rights Studies” to the president of the republic and presidents of the People’s Assembly and Shūrā Council (signed by 185 Egyptian public figures), 5th of March 2007, Cairo.

“Islam is the religion of the majority of citizens of Egypt and the collective values and principles of religions and beliefs are a main source of legislation without contradiction of Egypt's commitment in accordance with the international human rights covenants or violation of the principle of equality before the law. Enjoying rights and civil freedoms shall not be reliant on the religious beliefs of individuals under abidance of the state institutions by neutrality as regards religions and beliefs.”

* Egypt First Conference²²⁹:

“Islam is the religion of majority of Egyptians and Arabic is the official language of the state and the basic principles of the Islamic sharī’ah are the main source of legislation without prejudice to the rights of non-Muslim citizens. The state guarantees fair opportunities and full equality for its citizens under law as well as non-discrimination in any form on the basis of gender, race, color, religion or any other reason. The state shall also guarantee freedom of thought and freedom of belief for all citizens and these shall not be restricted in any way.”

* The Azhar Document²³⁰:

“The Azhar Document supports the establishment of a modern, democratic and constitutional state that is based on a constitution that shall distinguish between the executive, legislative and judicial branches and its governing legal institutions. Such a constitution shall establish the framework of law and guarantee the rights and duties of all citizens on an equal basis so that the legislative power is to be held by the people's representatives in accordance with correct and sound Islamic concepts. Islam has never in its legislative laws, its culture or throughout its history experienced what has been known in other cultures as a religious state or a theocracy which oppressed people and caused suffering for mankind during some epochs of history. Islam has allowed people to manage their societies and to choose the mechanisms and institutions which realize their interests provided that the principles of the Islamic sharī’ah were the main source of legislation in a way that guaranteed that followers of other divine religions to refer to their religious laws in their personal status affairs.”

²²⁹ The text of the political document issued by the conference of “Egypt First”.

²³⁰ Statement of the Azhar and a galaxy of intellectuals on the future of Egypt, 9th of June 2011, Cairo.

* The Egyptian National Council²³¹:

“Islam is the religion of the state and Arabic is its official language, and the principles of the Islamic *sharī’ah* are the main source of legislation while affirming such principles with constitutional guarantees that ensure:

- The right of non-Muslims to refer to their own religious laws as a source for personal status laws.
- The principles of Islamic *sharī’ah* are the agreed-upon by collective principles.
- This article is addressed to the legislator and no one else. It allows him to select from jurisprudence without being bound by the statements of Muslim scholars. It gives the legislator the right to strive to achieve the interests of citizens as he perceives them within the context of the legislative objectives while being under of the guidance of the Supreme Constitutional Court alone concerning the objectives of the legislator and of legislative deviations.
- Power in the society should be that of state authorities and not individuals or groups.

* The Democratic Alliance for Egypt²³²:

“Islam is the religion of the state, Arabic is its official language and the principles of the Islamic *sharī’ah* are the main source of legislation, and non-Muslims have the right to resort to their own laws as regards their personal status affairs. Islam also ensures the freedom of belief and worship and support of national unity, while reiterating the principle of equality among citizens of other religions.”

* Draft on the Principles Governing the Constitution²³³:

“Islam is the religion of the state, Arabic is its official language and the principles of the Islamic *sharī’ah* are the main source of legislation, while reiterating such principles with constitutional guarantees which ensure the right of non-Muslims to rely on their own legislative principles as a source of their personal status laws.”

²³¹ Document (Declaration of The Principles of the Egyptian Constitution after January 25th Revolution 2011), the Egyptian National Council, 3rd Issue, July 2011, Cairo.

²³² Text of the Document of The Democratic Alliance for Egypt, *al-Wafd* newspaper, 8th of July 2011, Issue No.7603, Cairo.

²³³ Full texts of the projects of the principles governing the constitution (2), *al-Shurūq al-Jadīd Newspaper*, 16th of July 2011, Issue No.896, Cairo.

* National Dialogue Document²³⁴:

“Egypt is a civil state. It is governed by *sharī’ah* as the main source of legislation, and non-Muslim citizens are to refer to their own laws and regulations as regards personal status and their religious rulings in light of full equality among citizens regardless of differences in color, religion, gender or race. Without doubt, the the Azhar Document could be a beginning for drafting a national charter whose content of principles has been approved by several sectors of the Egyptian society.”

* Document of Declaration of the Fundamental Principles of the Constitution of the New Egyptian State²³⁵:

“Islam is the religion of the state and Arabic is its official language. Islamic *sharī’ah* is the main source of law and non-Muslims are to refer to their own laws as regards their personal status and religious affairs.”

It should be noted that many of the texts of the general proposals have mentioned personal status concerning Christian citizens, but neglected several issues that have triggered debates and disputes such as the election of the Patriarch, the building of churches and the role of the Millī (Lay) Council.

Therefore, it would be better for Christians if constitutional texts granted them the right to refer to their own laws concerning their religious affairs in general.

Conclusion

In conclusion, based on our past experience, we propose that a text which would meet all assurances and guarantees should read that the principles of Islamic *sharī’ah* are one of the main sources of legislation on one hand and that non-Muslims may have recourse to their own religions and teachings on the other.

Additionally, the aforementioned concept is in line with international treaties and covenants.

²³⁴ Text of the Document of National Dialogue, *al-Wafd Newspaper*, 26th of October 2011 – Issue No. 7698, Cairo.

²³⁵ Document of Declaration of the Fundamental Principles of the Constitution for the New Egyptian State (Dr. ‘Alī al-Silmī’s document), *al-Ahrām Newspaper*, 20th of November 2011, Cairo.

The proposed text is as follows:

Egypt is a civil state where Islam is the religion of the majority of its citizens. The principles of Islamic *sharī'ah* as well as the precepts of heavenly religions in general are to be among the main sources of legislation in a way that would not violate Egypt's commitments in accordance with international human rights agreements nor encroach on the principle of equality before the law. Non-Muslims may have recourse to the principles of their faiths as far as their religious affairs are concerned.