

# Islam and the Constitutions in Newly Reformed Countries in the Middle East: Putting an End to Tyrannical Rule

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The revolutions that started in Tunisia and spread to other countries in the Middle East have been dubbed the “Arab Spring.” Many countries in the Middle East have been under the thumb of an oppressive dictator. After several decades of this oppression, the people in these countries have resisted the continuance of this rule.

As the smoke clears, the task of rebuilding and reforming the institutions of government is the most important task ahead for those who demanded change. The most important aspect of this change is the country’s constitution. The constitution of these countries must play the same role as the constitution in the United States. These constitutions must embody the change the reformers desire and be as inclusive as possible to be legitimate.

One of the concerns of some international observers is the rise of the prominence of Islamic conservative parties. Another concern is the inclusion in the articles of the proposed new constitutions of these countries articles that declare Islam and Islamic law as the foundation of the constitutions.

Egypt and Libya have developed constitutional proposals much faster than other countries in the region experiencing this turmoil. Both countries’ constitutional proposals contain articles that refer to Islam and Islamic law. Egypt’s new constitution reads in Article 2 that Islam is the religion of the country, and “the principles of Islamic Law are the chief source of legislation.”<sup>1</sup> In Article 1 of Libya’s new proposed constitution, it reads that, “Islam is the religion of the state and the principal source of legislation in Islamic jurisprudence (Islamic Law).”<sup>2</sup>

These provisions in the new constitutions of these countries are nothing new in comparison with previous constitutions. For instance, in the early 1970s, Egypt drew up a new constitution. The National Assembly (as it was known at the time) was in charge of preparing the constitution. The assembly developed a preparatory committee, which asked a subcommittee to solicit and classify suggestions from the public. These suggestions

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were considered when developing the constitution, and then the constitution was voted in a country-wide referendum and adopted on September 11, 1971.<sup>3</sup>

The suggestions on Islam and the constitution involved declaring Islam as the state religion and involved arguments on the place of Islamic law in it. Based on the suggestions and the result of debate, Islamic law was considered by its principles as a source of legislation – but not the source. This language was incorporated into the Egyptian constitution long before the current revolution and the reform efforts.<sup>4</sup>

The provisions that Islam is the state religion and that Islamic law is at the very least a source of legislation is in a number of constitutions across the Middle East. The fear that the revolutions are giving way to Iranian styles of government is unfounded. Still, it leaves questions about why these provisions are in these constitutions and what they mean for government in these countries.

Religion is exceptionally important to people in Egypt and Libya, as well as for people in the larger region. Arab culture is often characterized as having a group/tribal loyalty and is ordered around what Philip Salzman, Professor of Anthropology at McGill University calls a “balanced opposition.” This concept is best described as tribal-organized security in a very decentralized, democratic, and egalitarian framework. This culture hinders the development of a constitution of rules that apply to everyone. As Salzman mentions, “particularism and contingency, so basic to complementary opposition, preclude universalistic constitutional frameworks and thus inhibit social and political integration at broader territorial levels including larger and diverse populations.”<sup>5</sup>

This mentality is perpetuated even by the government by its self-interested maximization of its own interest at the expense of the general populace. In this case, the balanced opposition is between the state and the people. This might be one of the reasons some Arab countries have tyrants for leaders who are willing to kill their own people to maintain their rule.<sup>6</sup>

Islam provides both legitimacy and unity for Arab countries. This might explain why the references to Islam in both old and new constitutions for Libya and Egypt exist. It might simply be placed there in respect and not really mean that Egypt or Libya will be a Saudi Arabia or Iran. Salzman recognized the role Islam plays as a unifying force when he noted that, “Islam provided in the Umma, the community of Muslims, a more inclusive level of integration than tribal organization.”<sup>7</sup>

Aside from the symbolic aspect of including Islam in the constitution, there could be some substantive application of Islam in the general society

as permitted by the constitution. To name a few examples, Islam provides for the fair treatment of orphans, social welfare programs for the poor, guarantees for workers, prohibitions on corruption, relegation to private moral judgment on religion, protection from financial exploitation, and protection from illegal searches and seizures. All of these points ring a bell for those concerned to develop a liberal state. Those aspects of Islam – which might be considered antiquated or even oppressive by outsiders, but impossible to forbid in any conservative Muslim society such as in Libya and Egypt – can still incorporate elements of this in the state administration in the very least to control the behavior of the people.

The actual application of Islam in Egypt and Libya is something the people of those countries have to develop on their own, and are dependent on their needs and desires. Regardless, the new constitutions have to include provisions that secure the rights and freedoms of their people. Of paramount importance is the impetus to secure the people from tyrannical rule.

Tyrannical rule led to the revolutions that have sprung up across the Middle East. Nearly every Middle Eastern and North African country has experienced some unrest, and much of that unrest has been directed at the incumbent ruler. Many of these rulers have been in charge of their countries for decades – with some running sham elections, in which rampant corruption erodes any legitimacy these elections might bestow. Constitutions provide a bulwark against tyrannical rulers, limiting their powers and creating a standard of behavior upon which to judge their rule. A well-crafted constitution has the potential to give way to a democratic leadership that is not tyrannical but instead a representative of the people.

The previous Egyptian constitution had provisions that limited opposition and gave far flung powers to former president Hosni Mubarak. The first and foremost restriction was the emergency law – which has allowed the government to break up public demonstrations, search without approval, detain suspects without trial and hold them indefinitely, as well as trying civilians in a military court. All of these powers reflect a tyrannical regime. Another provision detailed the characteristics to be a presidential candidate and that severely limited who can run. In addition, the judicial supervision of elections was eliminated, and this allowed widespread corruption at the polls. Once elected, the leader of Egypt could run continuously until dead. All of these provisions codified in the constitution led to widespread discontent over the lack of liberty, transparency, and accountability of the Egyptian regime.<sup>8</sup>

The new constitution of Egypt has taken into consideration these concerns by noting in Article 3 that sovereignty is from the people, and in

Article 4, that citizens have a right to form associations. Further, in Article 8, it provides that people cannot be detained or searched except by a warrant order. In Article 27, the stipulations for nominating a party member for president has been made significantly easier. Article 28 reinstates the judicial review of elections. Article 29 limits a president's term to four years and only two terms. In Article 59, details of the conditions for a state of emergency are covered, as well as the amount of time a state of emergency can exist.<sup>9</sup>

The new constitution of Egypt is only an interim constitution – mostly under the jurisdiction of the Supreme Council of the Armed Forces, which according to Article 56 has the better portion of administrative power over the state. According to Article 60, the People's Assembly (not National Assembly anymore) along with the Shūrā Council will elect a provisional assembly of a hundred members to prepare a draft constitution, which would be completed six months after the provisional assembly is formed. This draft will be submitted for a referendum to be voted on by the Egyptian people. and will be effective immediately upon approval by the people.<sup>10</sup>

There have been some rumblings in Egypt and renewed rallies over the creation of this provisional assembly. The military – by means of what has been labeled the “Al Selmi Document,” a proposal by Egypt's Deputy Prime Minister of Political Affairs Ali al Selmi – has broad powers over the creation of the new constitution. This proposal gives the military veto power over the new constitution and prevents future presidents and assemblies from inspecting the details of the military's budget. Additionally, it calls for the military to nominate eighty members of the one hundred in the provisional assembly. As the manipulation of the constitutional process reveals – tyranny, this time from the military instead of a particular person or party, is not completely absent from Egyptian politics.<sup>11</sup>

Returning to the discussion on Islam in the constitution, does the inclusion of Islam in these constitutions present the possibility for another form of tyranny akin to that of the Taliban in the form of religious zealots as opposed to secular, self-interested tyrants that have been discussed up to this point in this essay? The Qur'ān, the primary source of the principles of Islam, has only eighty verses in six thousand that have rules that pertain to public law.<sup>12</sup> The rules of Islam mostly come from the practices of Prophet Muḥammad (ṢAAS), the consensus of the scholars, legal reasoning, and interpretation.<sup>13</sup> Islam does not have a prescribed style of government leaving room for democracy to develop without impediment. There is a lot of room for discussion allowing for a healthy debate on various issues without offending the articles pertaining to Islam as the state religion and Islamic law as a source of legislation.

Relying on the realities of Islam may still provide a doorway for tyranny; hence, there is the need to explicitly guarantee the rights of the people in the Libyan and Egyptian constitutions by means of specific articles. Much like the realities of Islam, a constitution is only a piece of paper with a set of ideas. If the people of those countries do not accept them or consider them legitimate then the document achieves nothing. Democracy and greater freedom ensures that this document is accepted and followed. Concurrently, democracy and greater freedom might also ensure that Islam is more accepted and followed. An interesting comparison between Muslim countries under tyrants and those with democratic systems might uncover some of these links.

Another type of tyranny that also needs to be considered in this context is the tyranny of the majority. Egypt and Libya have majority Muslim populations with minority faiths, most of which are Christian and some Jewish. The declaration of Islam as the state religion and Islamic law as a source of legislation might create alarm amongst these minority populations living under this constitution. The new proposed constitutions of Egypt and Libya have direct protections within them for minorities. For instance, after declaring Islam as the state religion and Islamic law as the principal source of legislation, Article 1 in Libya's draft constitution declare that the state protects religious minorities. In Egypt's interim constitution, Article 7 forbids discrimination towards minorities, and Article 12 guarantees the freedom to practice one's religion. These protections are also found in the tenets of Islam, and have been clearly stated to help reassure minorities in Egypt and Libya that their lives and property will be protected under the new orders.<sup>14</sup>

The turmoil between Muslims and Christians in Egypt stands as a test of these assertions as the country moves forward in developing a permanent constitution. Developing the constitution must involve as many groups as possible from a number of backgrounds to ensure that tyranny of the majority does not become enshrined in the constitution and given new legitimacy. As Donald Horowitz, Professor of Law and Political Science at Duke University, points out, "the greater the number of individuals and groups involved in drafting a constitution, the higher the resulting level of democracy, the greater the constitutional constraints on government and perhaps the greater the durability of the resulting constitution."<sup>15</sup>

## Notes

- 1 "Constitutional Declaration 2011," Egyptian government webpage, [www.egypt.gov.eg/english/laws/constitution/default.aspx](http://www.egypt.gov.eg/english/laws/constitution/default.aspx).

- 2 “Draft Constitutional Charter for the Transitional Stage,” Al-Bab Arab Culture website, [www.al-bab.com/arab/docs/libya/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf](http://www.al-bab.com/arab/docs/libya/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf).
- 3 Joseph P. O’Kane, “Islam in the New Egyptian Constitution: Some Discussions in Al-Ahram.” *The Middle East Journal* 26 (April, 15, 1972): 137–48.
- 4 Ibid.
- 5 Philip Carl Salzman, “Arab Culture and Postcolonial Theory.” *Israel Affairs* 13, no. 4 (October 2007): 841.
- 6 Ibid.
- 7 Ibid.,840.
- 8 Ariel Zirulnic, “Five Ways Egypt’s Constitution Stifles Opposition.” *Christian Science Monitor* February 19, 2011, [www.csmonitor.com/World/Middle-East/2011/0209/Five-ways-Egypt-s-Constitution-stifles-opposition/Emergency-law](http://www.csmonitor.com/World/Middle-East/2011/0209/Five-ways-Egypt-s-Constitution-stifles-opposition/Emergency-law)
- 9 “Constitutional Declaration 2011,” Egyptian government webpage, [www.egypt.gov.eg/english/laws/constitution/default.aspx](http://www.egypt.gov.eg/english/laws/constitution/default.aspx).
- 10 Ibid.
- 11 Matt Bradley, “Islamists Lead a Massive Protest in Cairo.” *Wall Street Journal – Eastern Edition* , November 11, 2011, A12.
- 12 “The Law of Man Or the Law of God?” *Economist*, September 13, 2003, 10–11.
- 13 Ibid.
- 14 “Constitutional Declaration 2011,” Egyptian government webpage, [www.egypt.gov.eg/english/laws/constitution/default.aspx](http://www.egypt.gov.eg/english/laws/constitution/default.aspx); “Draft Constitutional Charter for the Transitional Stage,” Al-Bab Arab Culture website, [www.al-bab.com/arab/docs/libya/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf](http://www.al-bab.com/arab/docs/libya/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf).
- 15 Donald L. Horowitz, “Writing the New Rules of the Game.” *The Wilson Quarterly* 35, no. 3 (July 15, 2011): 54.