

Sharia and Egypt's Constitution: an Iraqi blueprint

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[Ayelet Banai](#) [1] 29 June 2011

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The constitutional debates that took place in the run-up to the formation of the current Iraqi constitution provide a blueprint for the questions Islamic parties must address if they are to be insiders to the process of consolidating democracy.

The importance of a new constitution and a proper constitutional process for Egypt after 25 January and the end of Mubarak's rule can hardly be exaggerated. A successful reform that enshrines civil and political rights and the equality of women, and stipulates principles of parliamentary rule and decentralization may well make the difference between a better future for the entire region and a decline of the great events of the Arab Spring into another chapter of bitter disappointment in the contemporary history of the Middle East.

As the Supreme Council of the Armed Forces ([SCAF](#)) [14], Egypt's transitional power, holds consultations on whether and how to embark upon such a constitutional process, there is a tangible fear among various opposition groups, trade unions and parties, including religious organizations, that Egypt will 'go Islamist', Sharia will become law, and the clergy will take the position of rulers and law-makers (see Emad Gad, [How to author a constitution](#) [15], *Ahram* online 31.05.2011). In a [recent interview](#) [16], Gamal al Banna, Egyptian reformist Islamic scholar (and brother of the founder of the Muslim Brotherhood, Hassan al Banna), argued that no civil state can be founded on Islam: if this happened, he argued, it would become a religious state. In view of the failed attempts at Islamic rule in Arab countries, including Algeria and Sudan, al Banna added: "I believe that if the Muslim Brotherhood wishes to rule [Egypt], then they must forsake the application of Islamic law." At the same time, the official Muslim Brotherhood's position against a reform of the constitution in a secularist-democratic direction won a large majority in a referendum in March, and the movement's success in the coming elections in September is likely to be considerable. If no change occurs in the current constitutional process, the new Egyptian constitution will be drafted by the parliamentary majority after the September elections. In the latest public opinion polls Egyptians in substantive numbers affirm that they wish to see religion and clerics included in the legal system of their country.

Is disaster inevitable? Though pragmatic considerations may yield a compromise in the short term, it is worth considering what the broader and principled conflict between constitutional models is about. Beyond the pressures of daily politics, a profound choice is looming large on the horizon: will Islamists take this historical chance and transform themselves from opposition-only movements,

whose only promise is destruction of what exists, into a constructive governance alternative that does not undermine the very possibility of democracy? It was not so long ago that Christian parties in Europe had to navigate their way from full opposition to parliamentary democracy as a system to becoming a political power within it, and that a Hindu national liberation movement in India created within the Indian Constitution an original model of separation and autonomy between state and religion. What would it take for Islamists to follow suit?

The constitutional debates that took place in the run-up to the formation of the current Iraqi constitution should not be overlooked. Though eclipsed by the sounds and sights of terror at home and growing dislike of the occupation of Iraq by the United States, the constitutional debates in Iraq provide a blueprint for outlining the questions Islamic parties must address if they are to be insiders to the process of consolidating democracy in any country, rather than its foes. Three principles enshrined in Iraq's constitution pose a great challenge to Islamist parties across the region: first, the people are the sovereign - neither God, nor a community of believers, but the body of citizens of a country defined by its geographical borders. "We, the people of Iraq?", reads the [preamble](#) [17], "of all components and across the spectrum".

Egypt's national flag dominated the mass demonstrations in January. Will Egypt's Islamic parties also rally behind the national flag, foregoing the flags and symbols of the trans-national community of believers? "We the people of Iraq" and equally "We the people of Egypt" poses a fundamental break with tradition not only for Islamists, but also for pan-Arab nationalists. For decades, pan-Arab nationalism has contested and transgressed the national-territorial borders of the countries of the Middle East and North Africa, claiming to speak on behalf of a trans-territorial nation, while excluding many of the citizens and inhabitants of these countries, notably Kurds and [Shiah](#) [18]. While the constitution of Iraq still makes clear reference to the country's affiliation to the Arab and Muslim worlds, the reference point for political legitimacy, according to this constitution, is however no other than the people of Iraq.

Second, the people are sovereign, through their elected parliament and according to their constitution, make the laws of the country. Much attention has been paid over the last decade to the compatibility of the values of Islam with the values of democracy, but the key question lies elsewhere, in what at first sight might seem a procedural question: what legitimates the legislation that any state and its citizens shall follow? For fully-fledged fundamentalists such as [Ayman al Zawahiri](#) [19], past member of the Egyptian Muslim Brotherhood and today one of the world's most wanted terrorists, the answer is clearly an across-the-board rejection of democratic government. For him God's religious scripts are the law, and the law is not for human beings to question, accept, amend or reject. Instead, there should be clerics interpreting already-existing and eternal sacred truths. The mass-mobilization in Egypt in January spoke volumes about the [failure](#) [20] of Islamic fundamentalists to reach the hearts and minds of their public and bring about the popular religious uprising that they have long sought. Will the Islamic parties in Egypt, now taking it upon themselves to participate in the normal democratic game of partisanship and election, find their way to endorsing substantively the democratic prerequisite according to which peoples through their parliaments are the authors of legitimate laws, or will democracy remain for them merely a justified means to another end entirely?

Third, there is a formulation in the Iraqi constitution with respect to the status of Islamic religious law that will rightly worry any secularist, but which at the same time poses a serious challenge and dilemma for Islamic parties, in the wake of a new democratic era. Article 2 of the Iraqi Constitution stipulates that no law shall contradict the established provision of Islam, no law shall contradict the principles of democracy, and no law shall contradict the rights and basic freedoms stipulated in the constitution. The latter includes, "equality before the law without discrimination based on gender, race, ethnicity, origin, color, religion, creed, belief or opinion, or economic and social status" (Article 14). While this stipulation clearly opens the door to the very risk raised by Gamal al Banna, that religious authority will take over law making, it also places unprecedented pressure on religious schools and authorities to reform. On a variety of political issues, including the status of women and non-Muslims, prominent interpretations of Islamic law today are in conflict with the individual rights and principles of equality stipulated in the Iraqi constitution. But important religious leaders and authorities are beginning to take up the challenge for reform (most famously [Ayatolla al-Sistani](#) [21]'s opposition to Iranian-style theocracy, in favour of separation between religious-spiritual and

political authorities; also [recent co-operation](#) [22] between Sunni clerics in Iraqi-Kurdistan with campaigns for women's rights as in the case of a fatwa issued by the Kurdistan Islamic Scholars Union last July against the practice of female genital mutilation in their region).

In Egypt, following the Arab spring, clear voices for endorsing the established provisions of Islam that do not contradict concrete provisions of individual rights and representative democracy are now issuing forth from Egypt's Muslim Brotherhood, as in [the recently launched campaign](#) [23] of presidential candidate, [Dr. Abou el-Fotouh](#) [24]. Egypt's Brotherhood is an Arab-Sunni Islamic movement, the oldest in the region and a model for others that have followed; voices and political orientations coming from within it, even if in a minority position, can no longer be dismissed as marginal. Whether or not such positions will move towards becoming the mainstream of Islamic law and faith, the terms and rules of the conflict have already clearly changed for the better since 25 January, with unprecedented internal pressure towards reform of religion and with clearly identifiable and politicized points of dispute. It is no longer an amorphous and misguided discussion about the hypothetical compatibility of Islam with human rights or democracy, but instead a matter of well-defined policy issues and constitutional provisions, on which the Islamist, like all other parties competing for votes are now required to state their clear positions, and to take sides.

The results of the parliamentary elections scheduled for September in Egypt are far from predictable. A [vigorous coalition](#) [25] calling itself the 'Free Front for Peaceful Change' and backing a "Constitution First" campaign may yield a separate constitutional process that would change the context of the debate from contesting parliamentary and presidential elections to a more consensus-seeking constituent assembly. Regardless of the process, however, the stakes remain the same: conflicting models of political, legal and social order. The Muslim Brotherhood in Egypt, like other Islamic movements and parties in the region have the resources to go both ways. Following January 25 in Egypt, for the first time, they are asked to make a clear choice.

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