Chapter 4

The Ulama, Religious Authority, and the State

In the years shortly before and after Egypt's independence from Britain in 1952, the Islamic thinker and preacher Muhammad al-Ghazali (1917–96) launched a scathing attack on the ulama (the religious scholars) of al-Azhar, the most important Sunni religious establishment for Egypt and the broader Sunni Islamic world. For al-Ghazali, the ulama had failed to institute social justice in Egypt. The ulama, he argued, had distorted the texts in order to "serve trivial objectives, avoid clashing with those in power," and "choose prevailing customs or traditions."[1] He railed against the failure of the ulama to be politically engaged, being satisfied "with the performance of personal worship."[2] He claimed that the ulama had served the interests of those in power by facilitating the spread of poverty. By misinterpreting texts, he argued, they had encouraged people to forget their rights and be satisfied with their poverty.[3]

Al-Ghazali's critique of the ulama of al-Azhar, an institution from which he graduated, reflected the assumption that the religious scholars had an important role to play in Egyptian politics and society. It also showed that many Egyptians felt that the ulama had reneged on their duty to protect Islam and ensure that Islamic legal norms—and the broader principle of socioeconomic justice—were applied in the Egyptian public sphere. Yet the question of what precisely it was that the ulama should do to ensure that Egyptians and the Egyptian state adhered to Islamic legal norms remained

elusive. Premodern texts contain many references to the need for the ulama to keep their distance from the ruling authorities, and, in so doing, protect Islam. However, those texts tend to be less specific about what institutional mechanisms are necessary for ensuring that the ulama fulfill their duty to apply the sharia. For example, Ibn Taymiyya says that people who have authority are of two kinds: rulers and scholars. However, he is not specific about the relationship between the two.[4]

In Egypt in the 1950s, there was no constitutional statement on the sharia. The Constitutions of 1923 and 1956 also made no mention of the ulama of al-Azhar. The first constitutional statement on the sharia occurred with Article 2 of the 1971 Constitution, which, when amended in 1980, stated that "principles of the Islamic sharia are the major source of legislation." While the Constitution of 1971 established a Supreme Constitutional Court as the body that was to interpret the constitutionality of laws (Article 175), it did not specifically define who would make a decision about the constitutionality of legislation in cases that related to Article 2. It did not address who had the authority to speak for and represent the sharia. In the 1980s, the Supreme Constitutional Court—not the ulama of al-Azhar—emerged as the institution that adjudicated on the constitutionality of legislation in Article 2 cases. However, there was considerable tension in the Egyptian public sphere about whether judges on the Supreme Constitutional Court were the most appropriate individuals to decide what is and what is not the sharia, since they, unlike the ulama al-Azhar, were not trained in Islamic jurisprudence.

Such tension increased when the Supreme Constitutional Court decided to interpret the "principles of the Islamic sharia" in a way that minimized the number of Islamic texts—and therefore the number of Islamic legal norms—that are binding on the court. As a result, some felt that the ulama of al-Azhar should have a formal role in speaking for the sharia and should therefore be involved in determining the constitutionality of legislation as it pertained to the sharia.

The revolution of 2011 and the constitutional debates that ensued provided the opportunity to address what role al-Azhar would have in adjudicating Article 2 cases. It also provided the opportunity to address what role al-Azhar would have in the Egyptian state and governance more generally. The 2012 Constitution gave al-Azhar a more formal role by declaring that the ulama of al-Azhar should be consulted on matters relating to the sharia (Article 4). Yet Article 4 was ambiguous because it did not specify whether the decision that resulted from such a consultation was legally binding. In the spring of 2012, during the brief period of the Muslim Brotherhood's control,

a conflict ensued in the Egyptian parliament about Islamic financial bonds and how Article 4 should be interpreted. However, before the law relating to Islamic bonds could be brought into effect, the Egyptian president Muhammad Mursi was removed from power. In the Constitution of 2014, the part of Article 4 that had been at the heart of the conflict over Islamic bonds was removed. The Constitution of 2014 ended up establishing the Supreme Constitutional Court as the ultimate arbiter on questions regarding the compatibility of legislation with the sharia. However, while it no longer stated that al-Azhar should be consulted on matters relating to the sharia, it did establish al-Azhar's right to represent Islam. The outcome therefore was that, while al-Azhar was not given the right to decide on Article 2 cases, the constitution more formally inscribed al-Azhar as the main reference for Islamic affairs. In so doing, it gave al-Azhar an undefined leverage in the legislative process when issues related to Islam were involved.

This chapter addresses three important outcomes of these protracted debates and describes how the sharia has been recast into modern Islamic state law through constitutional commitments to the sharia. It illustrates the ways in which the presumed locus of Islamic legal authority—that is, who gets to speak for and represent the sharia—has shifted from its premodern antecedents. It shows that understanding constitutional articles about who is to represent the sharia cannot be understood either as a simple continuation of premodern commitments to Islamic authority, nor as a complete break from them. The complex ways in which the relationship between the sharia and the ruling polity were understood by premodern jurists were brought to bear on these constitutional debates.

The first outcome of the debates was that the role of al-Azhar and its ulama was—and continues to be—a source of intense concern in the Egyptian sociopolitical order. As Muhammad al-Ghazali's writing shows, the relationship between the ulama and the ruling polity has long been a source of tension in contemporary Egypt. This has particularly been the case since the 1960s. The debates about al-Azhar and its role in the constitution in the postrevolutionary context did not resolve this tension. While unease about the appropriate role of the ulama of al-Azhar and their relationship to the ruling polity also existed in premodern sharia, this unease in postrevolutionary Egypt was filtered through constitutional commitments to produce different outcomes.

The second outcome of the debate was that the role of the Supreme Constitutional Court in deciding on the constitutionality of legislation was confirmed and strengthened. While locating Islamic legal authority in the Supreme Constitutional Court had in effect been the legal reality

since 1979, the Constitution of 2014 solidified—and further legitimized—the state's right to adjudicate on Islamic legal matters. In so doing, the idea that the sharia should be subordinate to modern Islamic state law was consolidated. Locating the authority to speak for the sharia in the Supreme Constitutional Court therefore marked a departure from premodern understandings of the sharia which emphasized the limited nature of the polity's right to legislate.

The third outcome of the debate was that the role of the scholars of al-Azhar was defined by modern conceptions of religion. The separation between the Islamic and the non-Islamic became central to how the role of al-Azhar in contemporary Egypt is understood by al-Azhar itself and by other political actors. All parties distinguished the Islamic from the non-Islamic as a way of establishing their own authority and limiting that of others. Separating religion from nonreligion is central to how the modern state regulates religion. In Egypt, establishing al-Azhar's right to speak for the Islamic has tied the institution itself to the problem of differentiating what Islam is from what it is not.

This chapter addresses the three outcomes of the debates to show how the sharia has been recast by the modern nation state. It first traces the events and debates about the question of who has the authority to speak for the sharia in the decades leading up to the Egyptian revolution of 2011, then focuses on the aftermath of the revolution and the key debates that took place during the interconstitutional period. It then proceeds to discuss the significance of these events and illustrates the way in which the debates about al-Azhar, the Supreme Constitutional Court, and who gets to speak for the sharia, represent how the presumed role of the sharia has been filtered through modern assumptions about the role of religion.

The Egyptian Revolution and the Constitution of 2012

The Egyptian revolution of 2011 gave al-Azhar the opportunity to renegotiate its relationship with the state. Premodern sharia had been developed by private scholars, who emphasized the importance of maintaining distance between the Islamic scholars and the state. From the eleventh century on, this separation had been weakened, Ahmet T. Kuru argues, as the ulama became increasingly allied to the state. This alliance began under the Seljuks (1037–1194), then spread to other Sunni states, particularly the Mamluks.[5] This separation was also undermined under the Ottomans, but particularly so from the nineteenth century, when the state, as opposed to the ulama,

emerged as the carrier of legal authority. This shift in legal power enabled the state to appropriate al-Azhar, which was founded in 972 and gained its status as the preeminent institution of Sunni Islam at the end of the eighteenth century. The appropriation of al-Azhar by the state from the early nineteenth century on challenged the separation of powers between the jurists and the state that had been so frequently held up as the ideal. This appropriation by the state partly began during the time of Muhammad ʿAli (1769–1849), who established courts independent of Islamic law and nationalized much of the land of religious endowments (*awqaf*). Daniel Crecelius argues that Muhammad ʿAli "showed an open disdain for the ulama. He no longer consulted them on matters of government and policy and if they opposed him he simply found a way around their opposition."[6] However, it was not until Egyptian independence and the presidency of Gamal ʿAbd al-Nasser (1918–70) that the state's control over al-Azhar reached its peak. In 1956 the sharia courts, previously controlled by the ulama, were incorporated into the civil system. In Law no. 103 of 1961, al-Azhar became attached to the presidency with a special minister responsible for it, and the shaykh of al-Azhar was appointed by the president from among al-Azhar's scholars (Article 5).[7] The same law placed family and public endowment lands under the supervision of the Ministry of Endowments.[8] Al-Azhar thus became a state-supported rather than a privately endowed institution.

The theme of al-Azhar's subordination to the state has dominated the historiography of al-Azhar since the 1960s. There is no shortage of polemics against al-Azhar itself and against its capture by the state. Such censure argues that the nationalization of al-Azhar has hindered it from playing its role as the guardian of Islam and that it has been used as a political tool. These criticisms draw on premodern assumptions that it is best for religious scholars to maintain distance from the ruling polity.[9] Polemics against al-Azhar have served to justify the claims of Islamist groups like the Muslim Brotherhood that they can return the state to Islamic morality. In 2008 ʿAbd al-Munʿim Abu al-Futuh complained: "We are not satisfied by al-Azhar and it is a government organization . . . it is used politically and while sometimes al-Azhar voices a political opinion, if it is afraid of the government, it does not talk about politics."[10] According to the Islamist writer and thinker Fahmi Huwaydi, "the people do not trust al-Azhar" and it is a historical institution that came after Islam. As long as it "belongs to the government," he argues, it will be discredited.[11] Unease about al-Azhar's role is also felt from within the institution. One member of al-Azhar's Islamic Research Academy, Muhammad Shahat al-Gindi, complained prior to the revolution in 2011 that

al-Azhar lacked the power to enforce its decisions. He called for a constitutional stipulation stating that al-Azhar has the authority to implement its opinion according to the sharia.[12]

However, a number of authors have questioned this narrative of subordination and have emphasized that al-Azhar and the ulama in general have become increasingly independent and assertive.[13] Malika Zeghal argues that most of the ulama resented their submission to the regime in the 1960s. The Islamist violence of the 1980s, she argues, meant many independent ulama, followed by more official ulama, acted as political negotiators.[14] As a result, the ulama "regained a new public, national, and transnational centrality in the second half of the twentieth century."[15] Tamir Moustafa argues that the Islamist violence of the 1990s increased al-Azhar's leverage over the government and that the government "became increasingly dependent on al-Azhar for religious legitimation."[16] During this time, the Islamic Research Academy, created in 1961, emerged as a group of prominent scholars with Islamist sympathies and issued a number of fatwas that were not conciliatory toward the regime. In addition, a group of scholars calling themselves the al-Azhar Ulama Front were often critical of official policies. The Front clashed repeatedly with the shaykh of al-Azhar and the regime banned the Front in 1998.[17] During the Arab Spring, the Front attacked the head of al-Azhar and the state mufti for being too close to the Mubarak regime.

Additionally, official representatives of al-Azhar and the Ministry of Fatwas have emphasized that al-Azhar has a central role in the Egyptian political system and point to the fact that in the People's Assembly—which has now been replaced by a House of Representatives (supplemented in 2019 with a Senate)—there is a permanent religious committee and a member of al-Azhar who attends every session.[18]

The Constitutions of 1923 and 1956 made no mention of al-Azhar. Neither did the Constitution of 1971. This was despite the fact that Article 2 of the 1971 Constitution stated, from 1980 on, that the principles of the Islamic sharia are the main source of legislation. While the 1971 Constitution was not specific about what the principles of the sharia were and made no reference to who was going to interpret them, it did state that the Supreme Constitutional Court would judge the constitutionality of legislation (Article 175). After the amendment of Article 2 in 1980, the Supreme Constitutional Court emerged as the entity that decided on the constitutionality of legislation in Article 2 cases. The Supreme Constitutional Court, however, took a liberal and utilitarian approach to the principles of the sharia. As a result, some Islamists were unhappy with the way the Supreme Constitutional Court adjudicated on these matters. Questions emerged about whether the Supreme Constitutional

Court judges were qualified to decide on the constitutionality of legislation since they had not been trained in Islamic jurisprudence. For example, the Salafis were "dismayed by the court's refusal" to consider a number of hadith as legally binding.[19] Some argued that only al-Azhar had the authority to speak for the principles of the sharia.

In 2007 the Muslim Brotherhood issued a Draft Party Program which tried to address this question. The platform contained a number of clauses that had been inserted by conservative members of the organization. It stated that the Egyptian legislative authority must consult with a body of ulama over the sharia. However, it also limited the authority of the Islamic jurists, charged with speaking for Islam, to aspects of the Qur'an and the Sunna upon which there is juristic consensus. The platform stated that there are certain clear texts in the Qur'an and the Sunna that have been agreed upon by all jurists and which are not subject to debate. However, the other texts of the Qur'an and the Sunna are open to the interpretations of the ulama, based on the methods of the Islamic jurisprudence of the schools of law. Such interpretations are human endeavors and can be rejected.[20] The Muslim Brotherhood was accused of laying the groundwork for the establishment of an Iranian-style clerical state.[21] Such critiques, however, did not take account of the fact that the Twelver Shi'ite tradition is more legally homogeneous and hierarchical than the Sunni tradition. They also did not take into account the fact that the Muslim Brotherhood did not intend to bind state legislation to the jurisprudence of the four schools of law.

In addition, many members of the Muslim Brotherhood criticized the platform by stating that al-Azhar should only be a consultant on issues relating to the sharia. Figures such as 'Issam al-'Aryan, a prominent member of the Muslim Brotherhood affiliated with the Freedom and Justice Party, and 'Abd al-Hamid al-Ghazali, a professor of economics at the University of Cairo, emphasized that al-Azhar should not monopolize religious authority. They argued that the People's Assembly, in seeking the advice of al-Azhar, would have the right to decide on the compatibility of legislation with the sharia.[22] 'Abd al-Mun'im Abu al-Futuh, who broke with the Muslim Brotherhood and ran for the Egyptian presidency in 2012, emphasizes that the People's Assembly has the right to consult with numerous parties including Yusuf al-Qaradawi, scholars in Tunisia, as well as al-Azhar.[23]

After the revolution of 2011, the question of how the roles of al-Azhar and the Supreme Constitutional Court would be defined in the constitution reemerged. Various parties within al-Azhar successfully used the opportunity afforded by the revolution of 2011 to assert greater independence for al-Azhar. In March 2011, a group of religious scholars demanded that the

Supreme Council of Armed Forces (SCAF) restore al-Azhar's independence. The current shaykh of al-Azhar, Ahmed al-Tayyib, was appointed by Hosni Mubarak in 2010. In 2011 he seized upon the postrevolutionary environment and convened meetings between Egypt's intellectual elite and religious leaders to discuss al-Azhar's position.

The result of these meetings was the publication, which was broadcast on live television, of "The Document of al-Azhar on the Future of Egypt" in June 2011.[24] The document stressed al-Azhar's role as a representative of moderate Islamic thought. It stated that al-Azhar's function was to "determine the relationship between the state and religion and clarify what the correct foundations of siyasa shar'iyya are."[25] The document called for the establishment of a national constitutional modern democratic state in which the authority to legislate lies with the people's representatives as long as it agrees with what the document defined as the "true Islamic concept."[26] Islam, it stated, has left individual societies to choose the structures and institutions that are most appropriate for them, "on the condition that the comprehensive principles of the Islamic sharia are the principal source of legislation."[27] The document calls for the independence of the institution of al-Azhar and for reviving the Senior Scholars' Council (*hay'at kibar al-'ulama'*), which would have the power to elect the shaykh of al-Azhar.[28]

The document clearly reflects a desire on the part of al-Azhar for it to be more independent from the state. To some extent, the document supports the status quo, ensuring that commitment to the sharia is maintained but that the political system be relatively self-determining. Assem Hefny has argued that the document represents a "remarkable development in Al-Azhar's thinking" since 1979 toward identifying "itself with the state's political orientation" and "keep[ing] pace with political developments."[29] Importantly, the al-Azhar document shows that al-Azhar does not seem to see itself as having a direct involvement in the legislative process. The document does not attempt to assert any kind of direct legislative or constitutional role for al-Azhar and implies that the legislative process lies with the People's Assembly.

Yet it would be a mistake to read the document as a mere reinforcement of the status quo. The document affirms al-Azhar's right to determine the relationship between religion and state and its right to clarify siyasa shar'iyya. It ends by claiming that al-Azhar has the right to speak about and represent Islam, stating that "al-Azhar considers itself the specialist body that is to be referred to in Islamic affairs, Islamic sciences, Islamic heritage, and Islamic thought without withdrawing the right of the people to express their opinions once they have fulfilled the necessary learned requirements, conformed

to the etiquette of dialogue and respected what the ulama of the umma have agreed upon."[30] Al-Azhar was clearly staking its right to speak for what constitutes Islam and to speak on Islamic issues due to its knowledge of Islamic texts and interpretive methodologies. The document showed that al-Azhar intended to carve out its own sphere of authority by delineating a particular sphere that is Islamic—as opposed to the un-Islamic.

Perhaps surprisingly, the al-Azhar document won support from key political parties, such as the al-Wafd and al-Tagammu, which are often defined as secular. The support of such parties indicated that there was a general acceptance that al-Azhar should be independent from the government, yet have an increased role in speaking for Islam. According to Nathan J. Brown, such groups were interested "in buttressing al-Azhar not for its own sake but as a means of strengthening a religious counterweight to Islamist movements."[31] He argues that al-Azhar had allayed fears that it intended to make a firmer commitment to the application of the sharia and establish an Islamic state. In so doing, al-Azhar received a clear statement of support from secular parties for the institution's independence.

In early 2012, the Supreme Council of Armed Forces issued a decree amending Law No. 103 of 1961, in which the state supports what it refers to as the "independence of al-Azhar" and its financial needs.[32] While the law did not get much coverage, it was extremely significant since it partly addressed the problems that resulted from the restructuring that had occurred in the 1960s, which had effectively absorbed al-Azhar into the state and bound it tightly to the executive. The SCAF decree of 2012 revived the Senior Scholars' Council and made it responsible for electing the shaykh of al-Azhar and for nominating Egypt's mufti. The law states that one of the Senior Scholars' Council's responsibilities was to "decide—on a legitimate basis—on religious and legal affairs, and on contentious social issues that the world and Egyptian society face."[33] The decree affirmed that al-Azhar represented Islam, stating that "al-Azhar represents the final frame of reference in everything that relates to the affairs of Islam, its sciences, its heritage, and its juridical ijtihad and its new thought related ijtihad."[34] The decree thus stated that al-Azhar spoke for Islam and helped establish al-Azhar's partial independence, although it was still linked to the state and subject to governmental oversight.[35] The decree was followed up in 2013, when the prime minister issued a decree enabling the shaykh of al-Azhar to issue and amend stipulations from the 1961 law regarding the internal administration of al-Azhar.[36]

During the months leading up to the promulgation of the 2012 Egyptian Constitution in December 2012, discussions focused on whether Article 2 of

the 1971 Constitution, amended in 1980 to state that "the principles of the Islamic sharia are the main source of legislation," should itself be amended. A few arguments were made to remove Article 2 from the constitution altogether. However, this position did not have influential advocates. Michael Hanna argues that the existing clauses on the sharia were, for the most part, accepted as an unalterable starting point for the debate. Thus, he maintains, "even avowedly secular parties have bowed to the current realities of Egyptian society and ceded the fight over the inclusion of Islamic law."[37]

Most members of the Constituent Assembly wanted to elaborate Article 2 or keep it the same. Initially, the Salafis pushed for Article 2 to include a reference to the *marji'iyyat al-Azhar* which would make al-Azhar the frame of reference for questions involving the sharia. The Salafis then demanded that the reference to the principles of the sharia in Article 2 be changed to rulings, although this did not get the support of others and the article ended up remaining unchanged.[38] However, a new article, Article 219, was added to define the principles of the Islamic sharia as stated in Article 2 as "*including* its entire body of guidelines, its fundamental and jurisprudential rules, and its valuable sources with respect to the doctrines of the Sunni schools of law and the community" (my italics).[39] Article 219 connected the principles of the sharia to premodern Islamic jurisprudence, but did not limit those principles to premodern Islamic jurisprudence. David Kirkpatrick argues that Article 219 was a compromise between the Salafis, the liberal intellectuals, representatives of the church, al-Azhar, and the secular parties. He states that liberals and Christians on the committee believed they had done well since this was the loosest possible definition of the sharia. He argues that the Salafi leaders also believed they had won "a secret victory," since Shaykh Borhani argued that Article 219 mandated a strict and literal approach to the sharia.[40] There is a possibility that Article 219 could have resulted in curtailing the parameters within which the sharia could be interpreted. While it is true that some conservative Muslims may have hoped that Article 219 could overturn previous Supreme Constitutional Court rulings, Mohammad Fadel argues that, because the article simply includes such rules and does not exclude other sources, this "hope seems textually unjustified."[41]

In addition to Article 219, an entirely new article on al-Azhar was added to the 2012 Constitution. While the 1971 Constitution made no mention of al-Azhar, the preamble to the 2012 Constitution states that al-Azhar has "throughout history been the guardian of the identity of the homeland, has taken care of the eternal Arabic language and the respected Islamic sharia, and has been a lighthouse for moderate, enlightened thought."[42] More importantly, an article that constitutionally enshrined al-Azhar's independence and

established its role in the legislative process of the state was added. Article 4 of the 2012 Constitution states:

> The eminent al-Azhar is a comprehensive independent Islamic institution that alone has jurisdiction over all of its affairs. It is responsible for spreading the Islamic message, for the religious sciences, and for the Arabic language in Egypt and the world. *The opinion of the Senior Scholars' Council of the eminent al-Azhar is taken in matters connected with the Islamic sharia*. The state ensures complete financial support for the realization of al-Azhar's objectives. The shaykh of al-Azhar is independent and cannot be dismissed. The law determines the method by which he will be chosen from among the members of the Senior Scholars' Council. All the above is determined by the law (my italics).[43]

The most significant and contentious part of Article 4 implies that the legislature and the Supreme Constitutional Court have a duty to consult with the Senior Scholars' Council of al-Azhar before rendering their decisions. However, it raised—but did not answer—a very important question. It did not state that the opinion of al-Azhar's scholars is binding upon the legislature or on the court. There was therefore some question about whether either branch had the discretion either to accept or reject the advice of the Senior Scholars' Council.

Hasan al-Shafiʿi was one of al-Azhar's representatives on the 2011 Constituent Assembly, which drafted the 2012 Constitution. Al-Shafiʿi is a member of al-Azhar's Senior Scholars' Council and former director of the Arabic Language Institute in Cairo. While he was a graduate from al-Azhar, he was connected to the Muslim Brotherhood when he was young and went to prison in the 1960s. He spoke out against the coup against Muhammad Mursi. Al-Shafiʿi stated that the representatives of al-Azhar were clear that they did not want al-Azhar to take charge of the interpretation of constitutional texts. He argues that the representatives of al-Azhar wanted what he refers to as "a modern state" based on a distinction between the judicial, executive, and legislative bodies and based on the interpretation of constitutional texts by a Supreme Constitutional Court.[44] Al-Shafiʿi stated that the Salafi parties wanted the constitution to state that the Senior Scholars' Council should actually take charge of the interpretation of the constitutional texts. However, he argues that he and the other two representatives of al-Azhar (the former mufti, Nasr Farid Wasil, and a member of the Senior Scholars' Council, Muhammad ʿImara), were clear that they did not want this to happen. He argues that al-Azhar does not want to get entangled in the

balance of powers, in the relationship between the judiciary, the executive branch, and the legislature.[45]

The position of the Muslim Brotherhood on Article 4 similarly emphasized the importance of the Supreme Constitutional Court, although initially the organization was conflicted. Carrie Wickham writes that, "in the assembly's heated debates on these issues, Brotherhood figures . . . found themselves between a rock and a hard place, seeking to placate their secular counterparts while protecting themselves from the charge that, in a bow to public pressure, they have diluted their commitment to Shari'a rule."[46] In November 2011, the newly established political wing of the Muslim Brotherhood, the Freedom and Justice Party, issued a party platform stating that the state envisaged by the Freedom and Justice Party is "an Islamic, national, constitutional, and modern state which is based on the Islamic sharia as a frame of reference."[47] It is a state, it argued, which is a civil state in the sense that it is not a military state nor is it a police state. Neither, it stated, is it "a theocratic state (*dawla theoqratiyya*) which is ruled over by a class of men of religion—let alone one ruled over in the name of divine right. For there are no infallible people who can monopolize the interpretation of the Qur'an. Rather, legislation is entrusted to the people which possesses holiness (*qadasa*). Rather the rulers in the Islamic state are citizens elected according to the will of the people. The people are the source of authority (*sulta*)."[48] The platform also states that "the Supreme Constitutional Court should supervise the constitutionality of . . . legislation."[49]

Both Article 4 and Article 219 strengthened the role of al-Azhar in the legislative process. At the same time, however, Article 175 of the 2012 Constitution stated that "the Supreme Constitutional Court is an independent judicial entity, which is based in Cairo, and which alone decides on the constitutionality of laws and statues."[50] The Supreme Constitutional Court had been established as the ultimate arbiter on the constitutionality of legislation according to Article 175 of the 1971 Constitution. Yet, in stating that the Supreme Constitutional Court "alone" decides on the constitutionality of laws and statutes, Article 175 of the 2012 Constitution further established that it was the Supreme Constitutional Court and not the ulama of al-Azhar that would decide on Article 2 cases. Thus, while Articles 4 and 219 established more authority for al-Azhar, this authority was restricted by Article 175. The preamble to the 2012 Constitution also states that "the judiciary is proudly independent and is entrusted with the noble task of protecting the constitution, establishing the scales of justice, and preserving rights and freedoms."[51]

Articles 2, 4, 175, and 219 of the 2012 Constitution raised a number of questions relating to the issue of the relationship between law, the state, and sovereignty. What was the process for deciding on the constitutionality of laws and statutes when they pertain to the sharia? If al-Azhar was to be consulted, what was to be done with its decision? Was it enforceable? If al-Azhar determined that a piece of legislation was against the sharia, could the Supreme Constitutional Court overrule such a determination?

Such questions illustrate the ongoing tension regarding the source of legislative authority in the state and the relationship between the sharia and state law. Such tension—as has been seen—has its premodern antecedents in the debates about the relationship between fiqh and siyasa. Yet these tensions were now operating in the context of a constitution that represents the state's monopoly over legal authority. In seeking to answer questions raised by Article 2 of the 1971 Constitution, the Constitution of 2012 generated new ones. Thus, in trying to settle questions posed by Article 2 of the 1971 Constitution, the Constitution of 2012 simply continued tensions among Egyptians over what role al-Azhar should have.

A Parliamentary Battle and the Constitution of 2014

While Article 219 was not tested prior to its removal from the 2014 Constitution, Article 4 was. Article 4 served as an important reference point during a political argument that emerged in the short period of Muslim Brotherhood rule. The argument that took place involved al-Azhar and the Salafis, the Muslim Brotherhood–dominated Shura Council and Muhammad Mursi, and the liberal and secular opposition parties. It emerged over a bill in the Shura Council that related to Islamic legal bonds, or *sukuk*.

Sukuk refer to the Islamic equivalent of bonds. Whereas interest-bearing bonds do not comply with Islamic law, sukuk do because they are based on the concept of asset monetization, which involves releasing cash from an asset. The bond owner has a tangible interest in the investment and is thus able to collect profit as a rent, which is allowed in Islamic finance law.

The sukuk project aimed at reducing the budget deficit by increasing foreign currency reserves. It was spearheaded by the Freedom and Justice Party and the Salafi al-Nur party, and was initially presented to the People's Assembly in early 2012. The debate pitted al-Azhar against the Muslim Brotherhood. In late 2012, the financial committee of the Shura Council submitted a project for the sukuk to al-Azhar entitled "qanun al-sukuk al-islamiyya al-siyadiyya" (the law of sovereign Islamic sukuk).[52]

In December 2012, al-Azhar rejected the project on the grounds that it was not compliant with the sharia and endangered the state's sovereignty.[53] Al-Azhar objected to the sukuk program because, among other things, it gave foreigners the right to own sukuk. Al-Azhar proposed that only Egyptians be allowed to own them.[54] In February 2013, a revised draft of the sukuk law, in which the objections of al-Azhar had been considered, was presented to the Shura Council. A provision for not allowing the mortgaging of state-owned assets had been included along with a provision that a sharia committee would oversee its implementation. It also stipulated that foreigners had no right to possess sukuk. In addition, a change that had not been requested by al-Azhar was made: the term "Islamic" was removed from the title of the law.

The Shura Council then refused to submit the revised bill to al-Azhar. Debate erupted in the Shura Council between the Muslim Brotherhood and the Freedom and Justice Party on one side and the Salafi al-Nur party and al-Azhar representatives, particularly Hasan al-Shafiʿi, on the other. Hasan al-Shafiʿi threatened to resign if the Shura Council did not submit the bill for al-Azhar's approval. ʿAbd Allah Badran, head of the Salafi al-Nur party in the Shura Council, said that to be compliant with the constitution, the law should be submitted to al-Azhar. In a dramatic speech, ʿIssam al-ʿAryan of the Freedom and Justice Party responded to these demands by saying that al-Azhar is appreciated and respected, but he objects to its intervention and its transgression on the institutions of the state.[55]

The Shura Council refused to submit the law to al-Azhar, approved the law in late March, and then submitted it to President Mursi. During that time, those opposed to the Muslim Brotherhood formed a somewhat unlikely alliance with al-Azhar and defended it from the Muslim Brotherhood. A number of activist parties and independents formed an organization called the Front to Defend al-Azhar. Such groups claimed that al-Azhar was their shelter, their fortress and referred to al-Azhar as the House of the People.[56] They supported the "role of al-Azhar al-Sharif as a religious frame of reference (marjiʿiyya)" for Egypt and were afraid that extremist trends were usurping this frame of reference.[57] They argued that this was a way to save Egypt from the rule of the Muslim Brotherhood.[58] Such groups wanted al-Azhar to become a buffer against Islamic forces, to neutralize what was viewed as the growing influence of the Islamic movement.[59]

Succumbing to mounting pressure from al-Azhar's Senior Scholars' Council and from the media and the Salafi al-Nur party, President Mursi referred the law to the Senior Scholars' Council in early April.[60] On April 11, 2013, al-Azhar finally approved a law that would allow the country to issue sukuk

but said that some articles, which had been passed by the Shura Council, should be amended. Al-Azhar argued that the time frame for the sukuk needed to be defined, and objected to issuing bonds for religious endowments for more than twenty-five years. Al-Azhar also complained about Article 20 of the sukuk law, which stipulated that the president and the minister of finance have the last say on whether sukuk conform to the sharia. In April 2013, Rafiq Habib, a Coptic intellectual and former deputy chairman of the Freedom and Justice Party, issued a paper in which he argued that al-Azhar had overstepped its role in the sukuk law controversy by going beyond the question of whether it is compliant with the sharia.[61] Habib argued that Article 4 gives the Senior Scholars' Council the right to be consulted, but that it does not have a right to oversee and approve legislation.[62] Al-Azhar's complaints were incorporated and then the law was approved by the Shura Council in early May. On May 8, 2013, the Egyptian president approved the law allowing the government to issue sukuk.[63] The law, however, was abolished after the removal of President Mursi in July 2013.

After the coup of July 3, 2013 and the suspension of the Constitution of 2012, Article 219, which had defined the principles of the Islamic sharia as including the jurisprudence of the four Sunni schools of law, was not immediately removed. In the interim constitutional declaration, made by ʿAdly Mansour, the content of Article 4 did not appear, while Article 219, which had defined the principles of Islamic sharia as including the jurisprudence of the four schools of law, was retained as part of Article 1.[64] It is interesting that ʿAdly Mansour, head of the Supreme Constitutional Court, included something for which the Muslim Brotherhood had been criticized. During the constitutional deliberations in 2013, Article 219 was discussed. The Salafis hoped to keep the article or insert something equivalent to it, while the three representatives of the Egyptian Christian denominations threatened to withdraw from the process if it was not removed. After intense debate, al-Azhar ended up supporting the removal of Article 219 from the 2014 Constitution.[65]

In the final draft that appeared in 2014, the whole of Article 219 and part of Article 4 were removed from the amended constitution and the remainder of Article 4 was moved to Article 7. Article 7 now reads:

> The eminent al-Azhar is an independent Islamic institution that alone has jurisdiction over all of its affairs. It is the principal reference (*marjiʿ*) for the religious sciences (*ʿulum diniyya*) and for Islamic affairs. It is responsible for *al-daʿwa*, as well as for disseminating the religious sciences and the Arabic language in Egypt and the world. The state

> undertakes to allocate enough financial support so that it can achieve its goals. The shaykh of al-Azhar is independent and cannot be dismissed. The law determines the method by which he will be chosen from among the members of the Senior Scholars' Council.[66]

Article 7 therefore removes the 2012 stipulation that al-Azhar is to be consulted on matters pertaining to the sharia. The rest of the article relating to al-Azhar—which helped establish al-Azhar's independence as an organization and al-Azhar as the representative of Islam, both of which marked an important change with previous constitutions—is largely intact. Importantly, it still stipulates that al-Azhar is the main reference for religious sciences and Islamic affairs.

In addition, the 2014 Constitution strengthened the role of the Supreme Constitutional Court by removing the ambiguity concerning its role over the sharia. The Supreme Constitutional Court's role as arbiter on the constitutionality of legislation that relates to the sharia was placed in the preamble. The preamble to the 2014 Constitution affirms that "the principles of the Islamic sharia are the main source of legislation and the frame of reference for the interpretation of these principles lies in the body of the Supreme Constitutional Court rulings on that matter."[67] The 2014 Constitution also gives the Supreme Constitutional Court the authority to select its members with no oversight. Thus, as a consequence of this protracted debate, the authority of the Supreme Constitutional Court over the interpretation of the sharia was established. This, in turn, asserted the authority of state-centered positive law over the sharia.

Old and New Tensions

Making sense of the ideological and political motivations of the parties concerned in the constitutional debates about the role of al-Azhar is a challenge. The particular machinations of the different parties are difficult to follow and account for. Positions taken both reflected long-term ideological commitments and short-term political maneuvering. What is clear is that any reference to Islamist versus secular positions is insufficient in both describing and understanding what was at stake in the debates. This is shown by the fact that the secularists allied with al-Azhar against the Muslim Brotherhood's insistence that the sukuk law not be referred to al-Azhar.

It is perhaps particularly challenging to account for the fact that Ahmed al-Tayyib, the shaykh of al-Azhar, was so concerned with implementing Article 4 and with interpreting it in a way that enhanced al-Azhar's role, only to

then oversee its removal from the 2014 Constitution. What might account for his initial support for Article 4 and his willingness to drop it is his intense opposition to the Muslim Brotherhood. Al-Tayyib emphasizes that al-Azhar is the "first and last authority" in the Sunni Islamic world and sees the Muslim Brotherhood as an organization that is trying to "take over the role of al-Azhar and its place in the hearts of Muslims."[68] Overseeing the introduction of Article 4 and his insistence on interpreting it so as to maximize the authority of al-Azhar might well have been a means by which he strengthened the role of al-Azhar vis-à-vis the Muslim Brotherhood. Similarly, understanding the fact that Ahmed al-Tayyib was willing to let part of Article 4 be removed could also be understood in light of the fact that al-Tayyib had less to fear from the Muslim Brotherhood at that time.

However, assessing motivations is an extremely difficult—if not impossible—task. It is more useful to focus on the broader significance of the protracted debates and their outcomes. This can highlight the extent to which premodern Islamic understandings of religious authority are brought to bear on debates about religious authority in the modern state.

The first outcome is that the debates and the constitutional articles simply prolonged, rather than resolved, the tension over what al-Azhar's role vis-à-vis the state should be. This tension had historical antecedents rooted in the concern voiced by religious scholars that they should not get too close to the ruler. Yet such concerns took on new dynamics in this context. While the Supreme Constitutional Court was established as the ultimate arbiter on the constitutionality of legislation, the Constitution of 2014 more firmly entrenched al-Azhar's right to speak for the sharia. Thus, the fraught relationship between al-Azhar, the Supreme Constitutional Court, and the question of the sharia and state legislation was not solved, but simply recalibrated. Now that al-Azhar's role has been inscribed into the constitution as speaking for Islam, there are likely to be more debates over the extent and nature of al-Azhar's role.

Hussein Ali Agrama argues that the structures that compose the rule of law open into a domain that is fraught with suspicion, anxiety, and incessant legislation. He argues that persistent vigilance against the potential abuses of power is a characteristic of liberal traditions, and that this vigilance is a response to—and results in—suspicion. In modern law, he argues, more and more forms of social and political relations become regulated and legalized, while also becoming subject to the suspicion and distrust that makes those regulations necessary. As legislation and regulation increase, the possibility opens up for more manipulation and circumvention through legal loopholes resulting in the need for more legislation. With modern law, he argues,

anxiety and suspicion are manifested in the increasing concern with fact finding.[69] Claims, he argues, are received with skepticism and verifications and explanations are constantly demanded. The assumption is that "exceptions are to be overcome" and gaps "need to be filled."[70] Thus, Agrama argues, the law becomes more widely entrenched through the suspicion and distrust that accompanies it. However, increasingly complex legislation opens up more of the same potential for continued manipulation, "thereby fostering ongoing suspicion and distrust."[71]

Agrama illustrates this by comparing the Egyptian personal status law courts with the Egyptian Fatwa Council. The former are state courts—based on codified Hanafi law—and their rulings on family matters are subject to legal enforcement. Agrama illustrates that Egyptians view the rulings of the personal status courts with suspicion and often do not comply with them. The rulings of the Fatwa Council, however, are also based on the sharia but are not associated with any institutionalized mechanisms of enforcement. However, despite this, Agrama argues, one finds little noncompliance and "people take the fatwas they ask for very seriously."[72] Agrama uses this point to make an argument about the very nature of modern law. He contends that, when the authority of the sharia comes under the rule of law, it partakes of the suspicion and distrust that characterizes the modern rule of law.[73]

The argument that suspicion of the law is a particular feature of modern law is a compelling one. Yet, here, it is important to note that suspicion toward political authority also existed in premodern Islamic thinking. Such suspicion was reflected in the assumption that any political authority had to commit itself to the sharia, but that those who determined what the sharia was were, for the most part, not state functionaries. It was precisely because of suspicion toward the ruling polity that "Islamic law and its legal system tried—and largely succeeded—to keep largely (though not entirely) aloof from the circles of politics."[74] This is why jurists who were too close to the ruling power were seen to have compromised their ability to speak for Islamic law. Muhammad al-Ghazali (d. 1996) cites both the early jurist Sa'id ibn al-Musayyib (643–715) and the philosopher Abu Hamid al-Ghazali (1058–1111) who warn that it was better for the scholar to remain distant from the ruler so he would not be corrupted by him and to view those who get too close to rulers with extreme distrust. In so doing, Muhammad al-Ghazali was drawing on a long tradition of concern about the scholar's proximity to those in power. Such proximity would disable the ulama from playing its proper role as the voice of opposition to the ruling polity.[75] The ideal that was advocated was that "the provision of justice and legal advice was best done

from a position that governing authorities could not directly undermine if they disapproved of the justice or advice offered."[76] This was a difficult balance to strike since too much distance could lead to the ulama being accused of reneging on their role. Ibn Taymiyya (1263–1328) denounced his fellow ulama who "faced with all these abuses, turn away from political involvement, arguing that the only way to stop them would entail rebellion and violence."[77] Even the concept of siyasa shar'iyya retained the idea that the sharia, and therefore the ulama, should act as a negative restriction—in the sense that no one should be forced to act against the sharia—on the ruling polity's legislative role. This level of suspicion toward the state is precisely why the authority of al-Azhar's ulama has been undermined, especially since the 1960s.[78]

The case of the ulama and al-Azhar shows that there was greater suspicion toward the law-making polity in the premodern context than Agrama allows for when he connects such suspicion in modern Egypt specifically to the modern rule of law. However, Agrama provides something very useful to consider in relation to the particular way in which this suspicion manifests itself in contemporary Egypt. Agrama argues that one of the consequences of suspicion of the law—by legal personnel and by members of the public toward legal personnel—is the demand for verification and explanation. This can also be seen in the evolution toward greater constitutional specificity. Nineteenth-century constitutions were relatively brief; in the twentieth century, they became more verbose. As has been seen, one of the explanations for this lies in the fact that constitutions are used more and more as ideological documents. Constitutions are longer because there is more and more demand for explanations and forms of verification. Constitutions require more rather than less explanation. Modern constitutions are like contracts and the greater suspicion that various parties have of one other, the more elaborations are required. The more suspicion that different parties have of one other, the more those parties anticipate the potential for texts to be interpreted in different ways. So, when each constitutional statement is explained by the addition of a new one that qualifies it, this opens up the door for another one that helps forestall some of the implications raised by the previous one.

This move toward greater levels of clarification is a useful way of thinking about al-Azhar and the constitution. Mistrust and the need for further clarification formed an important component of the writing of both constitutions in 2012 and 2014 and the testing of the Constitution of 2012 in the spring of 2013. While the Constitution of 2012, for example, partly settled the ambiguity about al-Azhar's role by stipulating that al-Azhar needed to be

consulted on matters of legislation that pertained to the sharia, there were fears that al-Azhar would overstep its mark and impose its own legislative interpretation. Conversely, those who supported a greater legislative role for al-Azhar had been suspicious about the extent to which the Supreme Constitutional Court was committed to the application of the sharia. The Constitution of 2014 removed the part of Article 4 that had been so contentious, and established al-Azhar's right to speak for Islam. However, this did not quell suspicion about al-Azhar's role or about the capacity of the Supreme Constitutional Court to decide on Article 2 cases. While the Egyptian Constitution, has, for the first time, specified the role of the Supreme Constitutional Court and al-Azhar, this has, however, only served to generate more questions. The case of al-Azhar shows this anxiety and suspicion taking on new forms that need further clarification.

The Sharia as State Law

One of the most important outcomes of the debate about Articles 4 and 219 and al-Azhar and the Supreme Constitutional Court was that the authority of the Supreme Constitutional Court was formalized and enhanced. This reinforced the principle of state sovereignty over the sharia. Many Egyptians felt uneasy at giving legal authority to scholars who were not fully part of state institutions and the Constitution of 2014 showed this. However, there is something paradoxical in this. On the one hand, al-Azhar is not trusted because it is seen as being too close to the state; on the other, it is not trusted precisely because it is made up of religious scholars who are not elected state officials.

The normative relationship proposed by premodern Islamic theorists between the state and the sharia was one in which the role of the state was to facilitate—not interpret—the application of the sharia. In this sense, the law preceded the state. This was key to the distinction between fiqh, which contained ethical dimensions and recognized different scholarly approaches to legal questions as equally valid, and siyasa, the role of which was to facilitate the operations of the state in a way that advanced the public good and broader principles of fiqh. While such a normative ideal was often compromised in practice, which, as Ahmed Kuru illustrates, took place from the eleventh century on, the ulama retained the right to speak for and represent the sharia.[79] The concept that the state should be the vehicle for the interpretation and application of all law, including law that is Islamically informed, was in some respects novel when it was established in the nineteenth century. Islamic reformers increasingly adopted this position.

The Muslim Brotherhood has also inherited this perspective. This is why it was broadly supportive of the idea that the Supreme Constitutional Court should decide on the constitutionality of legislation. Thus, despite claims that the Muslim Brotherhood wanted to establish an Islamic state run by religious scholars, it was largely committed to the sharia as state law and to state officials speaking for the sharia. The Muslim Brotherhood's commitment to the role of the Supreme Constitutional Court in deciding on the constitutionality of legislation can be seen in the documents of their 2005 campaign, in which the organization "placed considerable emphasis on strengthening the autonomy of the judiciary. In its view, the judiciary is a 'safety valve' that allows for the resolution of disputes before they lead to violence or social disorder."[80]

ʿAbd al-Khaliq al-Sharif, a representative of the missionary section of the Muslim Brotherhood in 2013, voices such a position. According to his understanding of the implications of Article 4 of the 2012 Constitution, al-Azhar has an important role in the legislative process. However, he emphasizes that al-Azhar's role is only to help Muslims understand the Qur'an and the Sunna, which are the authoritative frame of reference for Muslims. He argues that al-Azhar or a Muslim scholar (*ʿalim*) cannot be the authoritative frame of reference. Thus, the Senior Scholars' Council can give its opinion according to its understanding of the Qur'an and the Sunna. The members of the council are due respect, he says, but that does not mean they are immune from criticism or that their opinion has to be taken. "If they are mistaken [in their opinion]," he says, "we will refute it."[81] For him, this is based on Islamic historical practice since early Muslims dealt with numerous legal questions for centuries before al-Azhar existed. Does it mean, he contends, that people such as Abu Hanifa (d. 767) and al-Shafiʿi (d. 820) did not understand religion because al-Azhar did not exist?[82]

Similarly, Rafiq Habib, a Coptic writer who was a founding member of the moderate Islamist al-Wasat party in the 1990s, wrote a critique of al-Azhar's actions over the sukuk controversy. Habib had been involved in the Freedom and Justice Party but announced his intention to leave politics in December 2012.[83] Habib uses the concept of "frame of reference," or the authority to which one refers (marjiʿiyya) in his thinking. He maintains that the frame of reference for the constitution is not al-Azhar but rather the sharia. Habib states that only the community can claim authority in the name of the Islamic frame of reference. He acknowledges that al-Azhar should make its opinion known on general issues, national issues, and issues relating to the Islamic framework.[84] Yet this role is only consultative: if it were mandatory to take the opinion of al-Azhar into consideration,

this would detract from the role of the legislative assembly. Rather, he contends, al-Azhar is an institution of knowledge and learning and it "should not be in competition with the other institutions of the state."[85] If its opinion were mandatory, that would give it "religious power (*sulta diniyya*) which would give al-Azhar power over the state itself."[86] Islam does not recognize sulta diniyya. In Islam, he argues, there are multiple Islamic entities and institutions and they all have "a role to the extent that they are trusted so that they can influence the umma."[87]

Likewise, a number of public intellectuals who have been associated with moderate members of the Muslim Brotherhood have asserted the importance of the Supreme Constitutional Court in deciding on the constitutionality of legislation. For the lawyer, Islamist intellectual, and former presidential candidate Muhammad Salim al-ʿAwwa, the ulama of al-Azhar have played an effective political role as a source of advice and guidance in Islamic history.[88] Yet for al-ʿAwwa the opinions of muftis and al-Azhar cannot be forced; this is grounded in Islamic history and in the views of the four schools of law. Fatwas, he contends, are by their very nature noncompulsory and courts are not obliged to enforce them. If such fatwas were compulsory, this would violate the principle of consensus, which holds that an important source of the sharia itself is the agreement of members of the community.[89] The implication here is that the opinion of al-Azhar has not only to be given, but also received for it to constitute a form of consensus.

Thus, for Muhammad Salim al-ʿAwwa, the Supreme Constitutional Court is the institution best suited to fulfill the role of constraining the power of the legislative branch.[90] He asserts that the Supreme Constitutional Court in Egypt is an independent body and that the judges themselves are "independent, and there is no dominion over them that forces them to judge contrary to the law."[91] He also argues that no one should interfere in such cases and criticizes those who denigrate the Egyptian judges or the courts. Agitation against a judicial decision is "a mistake and to appeal to the executive for assistance against it is a crime."[92]

The Muslim Brotherhood was not the only group to take this position. While the Salafi parties were clear that they wanted a stronger legislative role for al-Azhar, and while some members of al-Azhar also sought this, there are indications that Ahmed al-Tayyib, the shaykh of al-Azhar, did not want a direct legislative role for al-Azhar. In discussing the significance of Article 4 before its removal from the 2014 Constitution, Hasan al-Shafiʿi, one of al-Azhar's representatives in the Constituent Assembly, maintained that Article 4 made it necessary that al-Azhar be consulted, but did not establish a direct legislative role for al-Azhar. He stated that, "when the judges disagree

with themselves or the people as a whole disagree about whether [a piece of legislation] conforms to the sharia or not, then it is to be referred to the Senior Scholars' Council."[93] Thus, for al-Shafiʿi, the Senior Scholars' Council should only resolve differences over interpretation—that is, supplement the interpretation of the sharia by the legislative body and the Supreme Constitutional Court. Al-Shafiʿi's perception of the ideal role of al-Azhar is that it "does not take part in politics in the sense of party politics connected with day-to-day governance and the issuance of judgments."[94] Rather it should enter into politics when the concerns are national.[95]

In addition, Muhammad ʿAbd al-Fadil al-Qusi, who was a member of al-Azhar's Senior Scholars' Council and a supporter of Ahmed al-Tayyib, and al-Qasabi Mahmud Zalat, professor of *usul al-fiqh* (the foundations of jurisprudence), stated that the opinion of al-Azhar should be sought, although ultimately it is not an obligation that it be accepted or acted upon.[96] If there is a contradiction between the opinion of the Supreme Constitutional Court and that of al-Azhar, then the opinion of the Supreme Constitutional Court has greater weight. Al-Azhar should state its opinion, but ultimately it is up to the Supreme Constitutional Court to issue a determination. Al-Qusi calls for the law to be in accordance with both the Supreme Constitutional Court and al-Azhar. Yet ʿIssam al-ʿAryan's position that al-Azhar had no right to enforce its opinion was described by al-Qusi as "against the constitution, against Article 4," implying that the opinion of the Senior Scholars' Council is more than simply consultative. In fact, they contend, the president did end up referring the law to the Senior Scholars' Council, which is exactly what should have happened. Yet they are keen to contend, al-Azhar is a nongovernmental organization.[97] This aligns with al-Qusi's emphasis on the importance of the *marjiʿiyyat al-Azhar* for the civil Islamic state, which he positions between a civil state without a religion and a state that is based on rulers claiming to speak in the name of God.[98] Making al-Azhar the central frame of reference is necessary, he asserts, for "shaking off from the pure face of Islam the stains of extremism and crudeness and the misfortunes of violence and disunity that have overcome it."[99] Using al-Azhar as the frame of reference is vital, he maintains, for "faith in the essential truths of Islam." The method of al-Azhar is essential for harmonizing the relationship "between legislation, the goals of legislation, and the outcomes of legislation." It is also, he argues, essential for harmonizing the relationship between "reason and tradition."[100]

Brown asserts that al-Azhar emerged victorious from these events since it never wanted a constitutional responsibility. Its authority, he states, "was already established in law. Al-Azhar's current leadership seeks supreme

moral authority and autonomy," and this is what the 2014 Constitution gives it.[101] Yet it is important not to underestimate the significance of the fact that these clauses have affirmed al-Azhar's right to speak for Islam. There are a number of reasons to account for why al-Azhar would not want direct legislative responsibility. One of them is that the concept of multiple mutually orthodox schools of law is central to al-Azhar's identity. Al-Azhar was structured around respect for the doctrine of mutual orthodoxy. Teachers and students are divided among the codes of jurisprudence.[102] Ahmed al-Tayyib, the current shaykh of al-Azhar, argues that learning about the differences of opinion of the four schools of law is central to the mission of al-Azhar. The fact that you can be a Maliki or a Hanafi is drilled into children from the age of ten, he says. This, he asserts, is particular to al-Azhar, and cannot be found in Iran, where there is only imami fiqh, he says, or in Turkey where there is only Hanafi fiqh. It is on account of al-Azhar, he says, that the four schools continue to exist.[103]

Historically, al-Azhar has been influenced by the process of Hanafization that occurred in the nineteenth century.[104] It has also been influenced by the decline of the four schools of law and the emphasis on studies that span the four schools of law.[105] However, at al-Azhar today, all four schools are represented as they are in the Ministry of Fatwas. In the recently established Senior Scholars' Council, there are ulama from all four schools of law. Members of the Senior Scholars' Council must be committed to the methodology of al-Azhar, which emphasizes training in the jurisprudence of the four schools of law.[106] The fact that al-Azhar's approach to the sharia is based on the four schools of law and the concept of mutual orthodoxy means that it would potentially be compromised if it embedded itself more deeply in the judicial legislative process. This is because the legislative process aspires to the consistency—and not the plurality—of law. The Constitution of 2014 confirmed that the Supreme Constitutional Court had the authority to speak for the constitutionality of legislation and to decide on Article 2 cases. Thereby, the precedence of modern Islamic state law over the sharia was confirmed.

For Habib, the establishment of al-Azhar as a consultant, rather than as a legislator, returned al-Azhar to its "historical role," which was an institution of learning that "would announce its opinion to society and define rights and oppose tyranny."[107] Ibrahim al-Hudaybi, grandson of the former supreme guide (2002–4) of the Muslim Brotherhood, Maʿmun al-Hudaybi, and a Muslim Brotherhood younger generation reformer makes a similar argument. He says that giving al-Azhar the final say in defining what the sharia is "limits

Islamic knowledge to al-Azhar," and gives the institution itself, rather than the historical methods that made it famous, a level of authority that does not accord with the kind of authority it had historically. He writes that "assigning an institution with the task of interpreting Sharia is unusual in Islam, where, traditionally, knowledge was not seen to be associated with any specific institution or religious hierarchy but to scholastic aptitude that the nation has accepted throughout its history."[108] The institution of al-Azhar became important because of the rigorous teaching methods that created balanced identities and produced capable students. Al-Azhar therefore became distinguished because of the methodology followed by the individuals who went there, and not as an institution in and of itself.[109] He argues that Islamists in the legislative process bring different understandings of the sharia "propagated through their different institutions" and this is a positive thing. However, this would not be possible if al-Azhar was made the referential authority for legislation since this would mean that competing groups would vie to take control of the institution and use it for their own political gains. It would mean that, in order for the Islamists "to make their doctrinal ambitions successful, their only option [would be] to take control of al-Azhar."[110]

Al-Hudaybi is correct in saying that establishing al-Azhar's role as that of a consultant rather than giving it a direct role in the legislation of the state is more in line with the role it had historically. Yet al-Hudaybi does not account for the Supreme Constitutional Court's role in deciding whether legislation is compatible with Article 2. Giving the Supreme Constitutional Court, a state institution, the role of deciding on the constitutionality of legislation vis-à-vis Article 2 effectively gives the ruling polity the right to decide and interpret the sharia, thereby centralizing legal authority in state institutions and detracting from the role of the ulama to operate in the way that he describes. Lawrence Rosen contends that "in classical Islamic thought no court could be higher than another because such a hierarchy would imply that the highest court actually knew the truth when in fact no such claim for absolute moral judgment is properly supportable."[111] Thus, giving a court supreme authority in the sense of having the last say on whether something is compatible with the sharia goes against the doctrine of mutual orthodoxy which holds that all interpretations are human and therefore imperfect. A Supreme Constitutional Court that has the final say on the sharia as far as it pertains to state legislation does not have premodern antecedents. Given the newness of the Supreme Constitutional Court's role, this also means that al-Azhar—be it as a consultant or as a spokesperson for the Islamic sphere—is put in a different situation, precisely because it has

to be a consultant alongside a Supreme Constitutional Court that monopolizes Islamic legal authority for the state.

This is not to say that premodern sharia did not make way for state positive law. It did and had to. In some cases, premodern states appropriated the right to make legislation and the concept of siyasa shar'iyya allowed for that. Yet, for the most part, the sharia and siyasa existed alongside one another and remained distinct. Siyasa was bounded by the sharia. Premodern Islamic scholars retained authority over the sharia and that authority limited the ruling polity's right to legislate. It was maintaining the close but distinct relationship between the sharia and siyasa that allowed for the emergence of state law while not compromising the multivalent and infallible nature of the sharia. Yet giving the Supreme Constitutional Court the right to decide on Article 2 cases, thereby melding state law with the principles of the sharia into modern Islamic state law, moves the sharia further away from its premodern antecedents.

Islam and Non-Islam

The third outcome of these protracted debates about al-Azhar's role in the constitution was that al-Azhar's role as representative of the Islamic sphere was formalized. Modern conceptions about religion involve the belief that it can, should, and—in many cases—does occupy a separate and distinct sphere of activity, separate from the political. This is illustrated in conceptual language that distinguishes between the sacred and the profane, this world and the next, and the worldly and the otherworldly. Managing and constructing the relationship between religion and politics involves defining what religion and politics are and what sphere each should inhabit. Even for those—such as the Islamists—who advocate unifying religion and politics, what religion and politics are must be defined before such a unification can be achieved. In addition, while Islamists claim that they want the unification of religion and politics, they still maintain that the religious and the political should occupy different spheres of authority. A key part of determining the boundary between religion and politics involves determining who has the authority to speak for religion and for politics.

It is often argued that Islam does not recognize the distinction between the religious and the political spheres. It is true that transposing modern distinctions like religion and politics or the religious and the secular onto premodern Islamic history cannot easily be done. Yet the sharia is—and always has been—deeply involved in the drawing of boundaries that might be deemed comparable to the religious and the secular. Distinctions between

the legal and the ethical and between legal and nonenforceable legal norms have featured prominently in the sharia. Distinctions between religion (*al-din*) and the world (*al-dunya*) also existed. Sherman Jackson has argued that the sharia itself imposed limits and distinguished between the sharia realm and the nonsharia realm with the latter opening up the possibility of assessing human acts about which the revelation did not speak.[112] In addition, the sharia and state law existed alongside one another legitimized by the relationship between fiqh and siyasa. While such distinctions do not neatly translate to a distinction between the religious and the secular, they do suggest possible antecedents. The role of the ulama in dealing with, interpreting, representing, and speaking for the sharia from a contemporary and a historical perspective has been deeply intertwined with the drawing of boundaries and the demarcation of spheres of influence.

One of the areas in which suspicion and the consequent demands for clarification in modern law manifests itself is in the distinction between the civil and the religious spheres. Such a distinction is central to our concept of modern governance. John Locke (1632–1704) argued that the duty of the magistrate was to procure, preserve, and advance civil interests. Locke distinguished civil concernments from the business of "true religion," which he saw as the regulation of men's lives "according to the rules of virtue and piety."[113] There was much at stake in attempting to distinguish "exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other."[114] If such a distinction were not made, he argued, there would be no end to disputes between those who purport to care for men's souls and those who purport to care for the commonwealth.[115]

Locke was perhaps too confident about the possibility of drawing a line between the civil and the religious, although in arguing that everyone was orthodox to himself, Locke was perhaps aware that the line between the two would be understood differently. Distinguishing between the religious and the civil—or between what is religious and what is not—is a fraught legal exercise. Winnifred Fallers Sullivan narrates the case of *Warner v. Boca Raton*, which, in the 1990s, was brought on behalf of a group of residents of the state of Florida who sought to prevent city officials from removing numerous statues, paintings, Stars of David, and other formations that they had placed on the graves of their deceased relatives. The case centered on making a determination as to whether the religious practice in question was really religious in the eyes of the court. Addressing what constituted the "religious" involved addressing questions of religious authority, and the relationship between the religion that is lived and experienced by people

and the religion that is stated in the scriptures. Ultimately, the problem of distinguishing religion from nonreligion for the purposes of protecting the freedom of the former, Sullivan shows, is an impossible one, and, she argues, ultimately "the law probably cannot get it right."[116]

Separating the civil from the religious or the religious from the nonreligious is thus central to how the modern state negotiates the relationship between religion and politics. In contemporary Egypt, suspicion over the role of al-Azhar and the locus of legal authority was accompanied by—or expressed through—the distinction between the religious sphere and the nonreligious sphere. Such a differentiation became central to how different political parties responded to the demands for further clarification about al-Azhar's role. It was used to carve out areas over which the Muslim Brotherhood and al-Azhar had control.

While Islamic legal authority came to be monopolized by the Supreme Constitutional Court and the state in 2014, al-Azhar did not lose out. One of the most important consequences of the debates and deliberations about Articles 4 and 219 is that al-Azhar emerged in a relatively strong position as the representative of Islam. Al-Azhar successfully established itself as the representative of a particular sphere of authority. The events showed that distinguishing the Islamic from the non-Islamic and the sharia from the nonsharia formed a key component not only in how al-Azhar understands itself, but in how other political actors understand its role. In determining that it represented Islam, al-Azhar more formally inscribed the fact that the distinction between Islam and non-Islam will become a prominent feature of Egyptian law making.

In the case of Article 4 and the sukuk law, the differentiation between the civil and the religious spheres represented an important moment. The Muslim Brotherhood removed the term "Islamic" from the law as a way of bringing it out of al-Azhar's purview. The move was a shrewd one. The removal of the term "Islamic" reinforced the right of the legislature to draw the line between the Islamic and the non-Islamic and the religious and the civil and in so doing curtail the right of al-Azhar to intervene in the question. It thus enabled parties to claim the bill was not Islamic, did not relate to the sharia, and therefore did not lie within al-Azhar's purview. In April 2013, Yousri Ezdawy, a political researcher at al-Ahram Center for Political and Strategic Studies, argued that the Shura Council had the right to bypass the scholars of al-Azhar since the term "Islamic" had been removed from the description: "*sukuk* are no longer considered a religious matter and so it is not obligatory constitutionally to refer the law to Al-Azhar."[117] Ahmed al-Najjar, a member of the economic committee of the Freedom

and Justice Party, stated that the new law was entirely different from the previous one. He said that "it will not be called an 'Islamic sovereign sukuk law'; just 'sukuk law,'" but that it was still sharia compliant and would have a sharia committee to oversee its implementation.[118] While the attempt to stop al-Azhar from being involved in the sukuk law actually failed—since Mursi did in fact refer the bill back to al-Azhar—it reaffirmed al-Azhar's right to speak for Islam. It also ensured that in future legislation the parties involved will be more circumspect about how and in what ways the term "Islamic" is used.

The drawing of the line between the Islamic and the non-Islamic is the way in which a number of figures conceptualize al-Azhar's role. Gamal ʿAbd al-Sattar was vice minister of endowments in 2013, a professor at al-Azhar University, and a member of the Muslim Brotherhood. ʿAbd al-Sattar stated that, with regard to sukuk, "part of it was connected with the Islamic perspective because they were called—up to a certain point in time—*al-sukuk al-islamiyya*."[119] Demarcating the sphere of influence that pertains to the sharia as distinct from a sphere of influence that pertains to the nonsharia is key to al-Sattar's conception of al-Azhar's role. In this, al-Sattar contends that al-Azhar has a role in issues that are related to *al-hukm al-sharʿi* (i.e., a verdict or judgment based on the sharia). He argues that there is no contradiction or conflict between the role of al-Azhar and that of the Supreme Constitutional Court. The distinction between the sharia and the nonsharia explains this. The implication is that, because al-Azhar deals with a "particular part" of the law, the al-hukm al-sharʿi, this area of jurisdiction does not infringe upon that of the Supreme Constitutional Court, which has jurisdiction over an area of the law that does not relate to the sharia. He asserts that al-Azhar's opinion on religious issues that are connected with sharia must be taken.[120]

ʿAbd al-Hamid al-Ghazali, a professor of economics at Cairo University, argued that if an issue or a piece of legislation is "related to religion, the final say should be with al-Azhar's Islamic Research Academy, but if there is something connected to managing the economy, the final say should be with the People's Assembly."[121] There is, he maintains, an obvious difference between the "affairs of life" and "religious affairs." The People's Assembly has authority over the affairs of life and al-Azhar has authority over religious affairs. Yet he acknowledges the problem in drawing a line between the two, stating that, when something relates to managing the economy, the People's Assembly has the final say, but it is unfortunate that the Egyptian economic system charges interest because this is regulated by Islamic finance law.[122]

ʿAbd al-Muʿti al-Bayyumi (1940–2012), the late Egyptian professor on the *usul al-din* (fundamentals of religion) faculty at al-Azhar University and former member of al-Azhar's Islamic Research Academy, stated that the legislative authority takes the opinion of al-Azhar in issues that are connected to religion. In addressing the question of where to draw the line, he states, "Islam rules legislation in general terms, but in religious issues it deals with details. Islam distinguishes between religious and worldly affairs. So there is no opposition between Islam and politics and economics. There is cooperation."[123]

In addressing the question of the extent to which members of al-Azhar should sit in the state's legislative bodies, Ibrahim Najm of the *Dar al-ifta'* and assistant to the former (2003–13) mufti, ʿAli Gumaʿa, states that this is appropriate "whenever the need arises," but that they will not just interfere in any issue. Al-Azhar can only interfere if the issue is connected with religion. There is no need, he argues, for a specialist in religion to attend every legislative session, although there is a permanent religious committee that ensures the overall objectives of Islam are being met and there are no violations of the sharia, such as in court cases that deal with capital punishment. He asserts that politics in Islam has two meanings: one in the sense of undertaking care of the Islamic community as a whole and the other in the sense of entering into the party process.[124]

In removing the term "Islamic" from the sukuk law, the Muslim Brotherhood tried to limit al-Azhar's authority to a particular sphere and, in so doing, protect the legislative body from any encroachment upon it. Yet, in limiting al-Azhar's role to speaking for Islam, it also reinforced and strengthened al-Azhar's right to speak for it. While the 2014 Constitution no longer states that al-Azhar should be consulted on matters of legislation, al-Azhar has firmly claimed its right—which is now constitutionally enshrined in Article 7—to speak for the religious sphere and thereby lay claim to it. It establishes al-Azhar as the main reference for religious sciences and Islamic affairs and establishes its authority to define the relationship between religion and state.

Yet, while reinforcing al-Azhar's role as the representative of Islam, the Constitution of 2014 did not resolve the question of the extent and nature of this authority. Nor did it resolve how the line between the Islamic and the non-Islamic would be drawn. In fact, when al-Azhar sought to amend the sukuk law, many of the grounds upon which it opposed the law did not strictly relate to clear principles of the sharia. Al-Tayyib argued that the law endangered the state's sovereignty and that sukuk should not be sold to foreigners. This points to the fact that al-Azhar's role to speak for Islam will

only result in further struggle about how to draw the line between what is Islam and what is not. Further legal questions and debates that involve al-Azhar's role in the legislative process are likely to pivot around the distinction between Islamic and non-Islamic issues. Distinguishing the one from the other, however, is irresolvable and will, in turn, generate more questions.

The revolution of 2011 and the ensuing constitutional debates provided the opportunity to address the question of al-Azhar's role in Egyptian legislation. The question of what role the ulama should have has been a source of tension for centuries, but has been particularly the case ever since the state appropriated al-Azhar in the 1960s. The promulgation of Article 2 of the 1971 Constitution raised the question of who gets to speak for the sharia. In 2011 Egyptians sought to address the question of al-Azhar's role by constitutionally defining that role. While the Constitution of 2012 made various proclamations about the role of al-Azhar and the Supreme Constitutional Court, it generated more questions about the import of these constitutional commitments. Thus, while the Constitution of 2012 gave al-Azhar some kind of legislative role, the ensuing sukuk law controversy showed that those articles had simply given rise to further questions about the nature and extent of al-Azhar's role and about the locus of Islamic legal authority. Article 219 was not tested prior to its removal, but similarly had the potential to create more legal conundrums about the relative weight of the rules of the schools of law and the broader principles of the sharia.

One of the important outcomes of these debates was that the priority of modern Islamic state law over the sharia was established. There was considerable reluctance at giving authority to an unelected body of Islamic legal scholars. This illustrates that, despite Islamic legal history's tradition of suspicion of state authority, Egyptian lawmakers have consolidated the modern idea that the locus of legal authority lies with the state. Yet one should not go so far as to assume that this question is somehow settled. Despite the fact that the state asserted its authority over the sharia and despite the fact that there was considerable reluctance to give authority to an unelected body of Islamic legal scholars, vestiges of the premodern suspicion of the state and of state law remain.

The continued legacy of such suspicion was one of the reasons why al-Azhar was able to establish its right to speak for the Islamic sphere in future legislative negotiations. This shows that contemporary Egyptians have inherited a sense that the ulama should play some role in the legislation of the state. The Constitution of 2014 did so by stipulating that al-Azhar should

speak for Islam. Yet, in doing so, the distinction between the Islamic and the non-Islamic became more firmly entrenched as a means by which al-Azhar's role would be understood by itself and others. However, the distinction between what is Islamic and what is not Islamic is far from self-evident. Giving al-Azhar the right to speak for Islam has simply increased the possibility of tension arising regarding how that role will be defined by itself and by others. The difficult nature of this question is likely to lead to further disputes between various parties as they use this distinction to limit the authority of others and augment their own.

Such outcomes illustrate the complex discontinuities and continuities that exist in debates about the role of al-Azhar in the modern Egyptian state. While drawing on the legacy of the relationship between the sharia and the law-making capacities of the premodern polity, the debate about who gets to speak for the sharia and what the relationship between the sharia and the state is, operates through distinctly charged questions about the relationship between the religious and the nonreligious spheres. They also operate with reference to new understandings about the role of the state and its monopoly on legal authority. A constitutional commitment to al-Azhar's role has reflected an increased need for constitutions to articulate what Egypt stands for. Yet inscribing al-Azhar's role through a constitutional commitment more formally establishes the constant need to distinguish between Islam and non-Islam.