

CHAPTER 6

The Family Is the Basis of Society

In 2012 a columnist in the *Guardian* wrote, “Congratulations to all conservative male Muslims in Egypt. According to the draft constitution, you qualify as the model Egyptian ‘citizen’ and the state will be there for you all the way to uphold your rights and defend your freedoms.”¹ This statement reflected a common occurrence in the debates about the 2012 Constitution, which is that it was accused of being deeply patriarchal, not only because of the constitutional clauses themselves but also due to the Islamist nature of the Constituent Assembly that drafted it.

The question of women’s rights was used in the political disputes between the Islamists, the secular and liberal parties, and the military to delegitimize each other. How representative of Egyptian society the constitution was deemed to be was connected to the number and type of clauses it contained relating to women’s rights. Article 10 of the 2012 Constitution, the first part of which stated that the “family is the basis of society” and that the foundations of the family “are religion, morality, and patriotism,” was singled out for criticism. The article, it was argued, consigned women to the domestic sphere by emphasizing the family as the basis of Egyptian society. This article was portrayed as having the potential “for the establishment of morality police that would roam neighborhoods to enforce a traditional and hardline vision of society.”²

Conversely, the dominant narrative about the Constitution of 2014 that was passed after the coup against the Egyptian president Muhammad Mursi in 2013 was that it represented a secular and inclusive Egypt, and supported women's rights. It was claimed that women's voices had been heard. There were numerous assertions that women enjoyed greater representation during the drafting process and that the constitution itself made a greater commitment to women's political rights.

One of the striking aspects of the debate about women and women's rights during the drafting of both constitutions was the moral outrage that accompanied criticism of the 2012 Constitution and the relative lack of criticism that accompanied coverage of the 2014 Constitution.³ On one level, the stakes were not as great as they were portrayed to be, given that all constitutional articles are subject to their interpretation in case law. Catharine A. MacKinnon has shown that there is no direct relationship between the language about women's rights in constitutions and the enforcement of those rights. Yet a great deal of energy was invested in demonizing the 2012 Constitution and in praising the 2014 Constitution. While the rhetoric implied that the 2012 Constitution was a reflection of Islamist ideology and discontinuous with what went before, in fact both constitutions were drafted in an unsystematic manner that drew heavily on earlier constitutions.

Despite the rhetoric surrounding the drafting and the promulgation of the 2012 and 2014 Constitutions, both had considerable continuity with previous constitutions. In addition, there was considerable continuity between the Constitution of 2012 and the Constitution of 2014. This continuity was illustrated in the retention of a key article (Article 10), first established in Article 5 of the 1956 Constitution, confirming that the family is the basis of society. In continuing to emphasize the importance of the family for the national well-being, both the 2012 and 2014 Constitutions retained the state's right—first asserted in the 1956 Constitution—to manage and fashion women and the family as a symbol of national culture and religion.

This chapter explores the way in which the concept of the family has become entangled in modern constitutional debates about the religious or secular nature of the constitution. It investigates how women's rights and the family came to be used as a delegitimizing and legitimizing tool in debates about the Constitutions of 2012 and 2014. Constitutional debates continually asserted that any reference to the family was "Islamist." Yet, despite the rhetoric, the Constitution of 2012 had considerable continuity with previous constitutions since 1956 in this regard. The academic literature on Egypt has shown how the family has become a means by which national unity and,

conversely, religious difference is articulated. The constitutional debates of 2012 and 2014 confirm this and illustrate the continuation of a particularly modern convergence between the family, religion, law, and culture.

The chapter contends that such constitutional debates demonstrate the fact that groups identified as secular or religious are debating within a very narrow range of possibilities and are much more similar than the discourse accounts for. This illustrates the unsustainability of the secular/religious binary that was so dominant in the debates. Drawing on the work of Tamir Moustafa, Malika Zeghal, and William Cavanaugh, the chapter advocates for the dispensation of such a binary and for thinking about tensions over the relationship between religion and state in Egypt in different terms. It argues that the constitutional debates show the ways that women and the family became a means by which different parties claimed a stake in the new post-revolutionary political reality.

In cutting across the secular/religious binary, this chapter demonstrates that there was something notable about the 2012 Constitution in relation to women's rights. The constitution illustrated that Islamists—like those deemed to be secular—shared a deep and pervasive understanding of the role of the state in society. It showed that the Muslim Brotherhood understands the role of the Islamic state in society as representing the interests of the governed in a way that moves far beyond the specific regulations of the sharia. Returning to Islamic political theory, it links the Muslim Brotherhood's understanding of family law with observations made in chapter 2 about the ways in which contemporary thinking about Islam has adopted the idea that the state is the locus of legal authority and has articulated a modern concept of *siyasa shar'iyya*.

The Authority of the Family

Talal Asad argues that one of the basic preconditions of secular modernity is the modern authority of the family. The concept of rights mediated by the private domain of the family, he argues, is integral to the process of governance and “to the normalization of social conduct in a modern, secular state.”⁴ Marriage, for example, has become central to the governance of the modern state. It was not until the Protestant Reformation that marriage began to be managed and registered by the state in Europe. The Anglican commonwealth model of the sixteenth and seventeenth centuries saw marriage and the family as serving and symbolizing “the common good of the couple, the children, the church, and the state all at once.”⁵ The Marriage Act of 1753 in England required a marriage to have a formal ceremony that was

registered with the state. The Matrimonial Causes Act of 1857 transferred all marriage and divorce jurisdiction from the church courts to the common law courts, so that the church courts no longer held formal legal authority over English marriage.⁶

In Islamic jurisprudence, however, Mounira Charrad illustrates that marriage is a private agreement between two families. Islamic legal texts do not necessitate that the marriage be registered with authorities. She points out that it is “a social and familial matter in which the state has no jurisdiction.”⁷ Charrad also shows that, within the sharia, the conjugal bond is fragile. Instead, the sharia supports the cohesiveness of the extended patrilineal kin group.⁸ The Shafi‘i manual of jurisprudence, written by Ahmad Ibn Naqib al-Misri (d. 1368), reflects this. The manual mentions heirs (*waratha* and *warithuna*), unmarriageable kin (*maharim*), ancestors (*usul*), and descendants/children (*furu‘*) and not the family as such. While it is clear that obligations to one’s children and parents are prioritized, no neat separation between these obligations and others—as denoted by the nuclear family—is implied.⁹ In addition, Islamic inheritance law, in which many members of an extended agnate kin group—and not the conjugal unit—are heirs to the deceased’s estate, also shows the lack of centrality of the conjugal bond. Obligations to one’s kin are conceived of in a broader sense than the nuclear family.

William Goode argues that the particular emphasis on the conjugal family, the nuclear family unit of parents and children, is partly the result of the forces of industrialization and urbanization.¹⁰ The ideal of the conjugal family was also adopted in nineteenth-century Egypt, where, Kenneth Cuno shows, there was a move away from the extended family. Polygyny became less common among the upper classes. The Egyptian royal family adopted monogamy, which then became a model for other Egyptians. Cuno argues that this model was not antimodern but illustrated the way in which “a domestic sphere to serve as the married woman’s domain” had been constructed “as part of the modernist project.”¹¹

Modernist intellectuals promoted the new family ideology during the last third of the nineteenth century. The acceptance of the conjugal family and companionate marriage among the educated elite meant that the question of the “emancipation of women” was utilized in colonial and nationalist counternarratives in the late nineteenth century.¹² Laura Bier has shown how Nasserists used state-sponsored feminism to transform Egyptian women into national symbols and make them representations of Egyptian cultural authenticity in the 1960s. Bier argues that, in the 1960s, Islamist and secular nationalist visions of women’s roles shared a number of characteristics.

Within both, she argues, gender is a means by which Egyptians negotiate how modern or authentic Egyptian society is.¹³

Islamist discourse manifested a number of similarities with nationalist discourse. In 1930 Rashid Rida (1865–1935) saw modern Egypt as threatened by “women’s revolution, the violation of marital vows, the disintegration of the family, and the bonds of kinship.”¹⁴ He felt national character and religious heritage were threatened. The preservation of religious heritage, traditions, values, the family—all backed up by a strong state—were central to this renewal project.¹⁵ Ellen McLarney shows how Islamic revivalist writers “demonstrate an extraordinary investment in religiosity expressed through the family, reproduction, childrearing, and private sexuality.”¹⁶ The family, she argues, has become a means by which the concept of an Islamic ethics is expressed. Islamist writings envision mothers leading the Islamic family and forming the political community.¹⁷

Saba Mahmood argues that the family’s entanglement with religion is one of the consequences of liberal secularism. She contends that, “even though religion is marginalized from the conduct of politics, it is simultaneously consecrated in the private sphere as a fundament of individual and collective identity in a liberal society.”¹⁸ Mahmood points out that the relegation of religion to the private sphere in turn politicizes religion and the family. Drawing on Marx, she contends that, “the secular liberal state does not simply *depoliticize* religion; it also embeds it within the social life of the polity by relegating it to the private sphere and civil society” (Mahmood’s italics).¹⁹ In a self-replicating process, religion becomes privatized and the more the family becomes associated with the private sphere, the more that sphere is associated with the family.

Yet, as was shown in chapter 2, the family—in a nonnuclear sense—was also an important means by which Christians distinguished themselves from Muslims in premodern Islamic history. Lev Weitz shows how family law was central for medieval Middle Eastern Christians in their articulation of difference from their Muslim counterparts. Marriage, with the development of its sacramental nature, and the family became central to the creation of an area of communal law for Christians.²⁰ Likewise, as will be shown in chapter 7, the autonomy of non-Muslims included—but was not limited to—family law which is why competition between the jurisdiction of non-Muslim communal courts and sharia courts occurred, among other things, around family law. While colonial intervention in support of the various privileges that the millet communities had in the late Ottoman period had the result of concentrating the idea that religious difference was based in the family, colonial intervention was using and building upon existing categories of identity. It is thus a continuation—and

recalibration—of the importance of the family that became so evident in Egypt's constitutional debates.

The Family, Egypt's Constitutions, and National Culture

The conflation between culture and women and the idea that the well-being of culture is necessary for national survival manifested itself in constitutional debates about the role of women. Constitution writing has been historically engaged in by men and Egypt is no exception. Women's voices have been largely absent from official constituting processes and decisive interpretations until recently. Catharine A. MacKinnon argues that women have not, for the most part, written constitutions or decided on constitutional matters. Gendered language dominates constitutions, with the usage of the male singular pronoun for the bearers of rights. Citizenship, she argues, has been equated with maleness. While in recent times women have had some voice in constitutional decision making, they do not have the same influence as men.²¹

In Egypt, with the expansion of the state in the late nineteenth and early twentieth centuries, the category of the family and women emerged as an object to be constitutionally defined and managed. Such questions became inextricably intertwined with the nature of the religious identity of the state. In the 1882 Constitution, there was no reference to women, and while the 1923 Constitution was far more comprehensive, women's rights did not feature prominently and the question of the compatibility between women's rights and Islam was not raised. The 1923 Constitution made no reference to women and their role as members of the nation and its political system although it recognized the right of girls to education (Article 19). Article 3 of the 1923 Constitution mentioned equality before the law but excluded gender. This is despite the fact that women's rights were on the agenda of Egyptian nationalists. Women had played an important role in the 1919 revolution which led to the limitation of British power in 1922.²²

The 1956 Constitution, passed by the newly independent Egyptian state, however, reflected the emergence of the family as a concept in nation building and a greater concern with women's rights. This constitution reflected the expectation that women would play an increased role in the public sphere. For the first time, it stated that there would be no discrimination on the grounds of sex. Women were given the right to vote and to run for office although men were automatically registered to vote whereas women were given the choice to register themselves. Article 5 of the 1956 Constitution

states that “the family is the basis of society and is founded on religion, morals, and nationalism.”²³ This clause became a consistent feature of Egypt’s constitutions.

Another clause linked the family and Egyptian society. Article 19 of the 1956 Constitution states that “the state makes it possible for women to balance (*al-tawfiq*) her work in society with her duties to the family.”²⁴ This stipulation is particularly interesting on a number of accounts: it specifically associated women with the private sphere of the family; it voiced an expectation of women’s increased role in public life; it put forward the assumption that state intervention was necessary to facilitate the role of women in public life; and it reflected the expectation of a possible conflict between the public and the private spheres. This section would be carried over into other constitutions in various forms.

This recognition of women as legal individuals with rights that had to be protected by the state was new and illustrates how, according to Laura Bier, feminist activism under Nasser was appropriated and monopolized by the state. Bier argues that the Nasser regime’s attempts to “liberate” women “brought novel forms of state intervention into women’s lives as well as new notions of equal rights—which were contingent upon gender-specific obligations that women were expected to meet as proper national subjects and citizens.”²⁵ As such, Bier argues, “Egyptian secularism entailed the engineered inclusion of Islam within the political and legal system rather than its exclusion.”²⁶

With the 1971 Constitution, this focus on the family and associating women with domestic roles continued. However, Article 2 of the 1971 Constitution marked an important change. Article 2 stated that the principles of the Islamic sharia are the main source of legislation. In addition, the 1971 Constitution set up an additional dichotomy. It implied that a role for women in the public sphere was potentially opposed to the sharia. While the 1956 Constitution stated that the state should make it possible for women to balance their work in society with their duty to their families, it made no explicit mention of the sharia, although the reference to women’s work in society being in agreement with her duty to the family could be taken as implying a potential conflict with religion. However, in the 1971 Constitution, this connection was made much more explicit when it emphasized that women were to have equal status with men and a role in the public sphere in a way that did not contravene the sharia:

The state shall ensure that it is possible for women to balance (*al-tawfiq*) their duties towards their family with their work in society—considering

women's equal status with men in the political, social, cultural, and economic spheres—without contravening the laws of the Islamic sharia. (Article 11)²⁷

The way the sharia was referred to in Article 11 differed from the way it was mentioned in Article 2. Article 2 relates to the principles of the Islamic sharia whereas Article 11 relates to its laws. While all laws are subject to interpretation, it does suggest that the court's latitude of interpretation would be narrower in relation to Article 11 than it would be in relation to Article 2. Thus, the area of women's rights was to be the area that would be most subject to limitation by the sharia.

Article 9 of the 1971 Constitution continued the commitment to the family although with a stronger statement of state intervention and management:

The family (*al-usra*) is the basis of society and is founded on religion (*al-din*), morality, and patriotism. The state will strive to preserve the genuine character of the Egyptian family and the values and traditions (*qiyam wa taqalid*) it personifies, while affirming and developing this character in the internal relations of Egyptian society.²⁸

Thus, the family was seen as the embodiment of tradition, values, and, through the reference to the "genuine character of the Egyptian family," the family became the means of establishing a unitary culture.

The rhetoric of the Muslim Brotherhood leading up to the revolution of 2011 represents a continuation of these sentiments. For example, the Muslim Brotherhood's draft Party Platform of 2007 stated that "women are the balance of the family" and that

the role of women in the family is based upon the foundation that they are the ones who are primarily responsible for the education of the new generation. The role of women is also based on the fact that the family—in our Egyptian, Arab, and Islamic civilization—is the fundamental unit of society. The renaissance of our umma is based on the renaissance of the family as an essential structure. For this reason, we see the importance of realizing a balance in the roles that women undertake, and of bringing about their role in the family and in life in general without imposing demands upon them that would conflict with their nature and their role in the family.²⁹

For the Muslim Brotherhood, like the Nasserists before them, the family constitutes an important mechanism by which a totalizing, unitary, and legible

culture could be both promoted and managed. It is notable too that the Muslim Brotherhood considers the state as the primary mechanism for such a realization.

Snares and Ruses

Articles on women's rights were subject to claim and counterclaim during the events that unfolded after the revolution of 2011. The narrative in the Western and the non-Islamist Egyptian press was that women's rights were excluded from the 2012 Constitution and that women had been shut out of the constitution writing process. While the Constituent Assembly that emerged was consistent with the idea of popular sovereignty, of the Constituent Assembly's one hundred representatives, only six were women, three of whom had overtly Islamist sympathies. Discourse about the unrepresentative nature of the Constituent Assembly was related to general discourse about the unrepresentative nature of the constitution itself. Women's rights became a particular focal point for references to the constitution as a trick.

Hala Kamal, a women's rights activist and professor in the Department of English at Cairo University, voices some typical critiques. Kamal argued that "the brevity in the phrasing of its articles [on women] went against the modern methods of constitutional phrasing, where rights and duties are specified and elaborated in a manner that would ensure their realisation and states [sic] the consequences of their violation."³⁰ Such brief and imprecise phrasing, Kamal argues, could lead to women's rights being manipulated. Kamal also critiques the fact that women were mentioned only twice in the 2012 Constitution. She emphasizes that women were only referred to in the preamble and not in the main articles.³¹

Yet this brevity in the description of rights applies throughout Egypt's constitutions and is typical of Arab constitutions. It is interesting that Kamal downplays the importance of the preamble. Liav Orgad argues that the content of preambles can speak of historical narratives, goals, and abstract concepts and often explain the reasons for the constitution's enactment. She argues that, for Plato, preambles are "the soul of the laws" and a means by which the legislator "convinces the people to obey the law."³² Orgad argues that preambles have played an important role in the making of law. While the preamble to the US Constitution generally does not enjoy binding legal status, this remains the exception rather than the rule. Orgad argues there has been a recent trend in comparative constitutional law that gives preambles "greater binding force—either independently . . . or as a guide for

constitutional interpretation.”³³ She argues that preambles can function to consolidate national identity, play a guiding role in statutory and constitutional interpretation, and serve as an independent source for constitutional rights.³⁴

Preambles thus show the ways in which the writers of a constitution understand the common aspirations, national culture, and norms of the nation. The preamble to the 2012 Constitution makes a clear statement that women form an intrinsic part of the nation. It argues that women as well as men brought the 2011 revolution about: “We publicly declared our complete rights to ‘bread, freedom, social justice, and human dignity’ attended by the shedding of the blood of our martyrs, the pain of our wounded, the dreams of our children, and the struggle of our men and women.”³⁵ The preamble declares adherence to a number of principles, one of which states that “the dignity of the individual is part of the dignity of the homeland. The homeland has no dignity if women in it do not have dignity. For women are the sisters of men and are their partners in national achievements and responsibilities.”³⁶

Despite the patriarchal reference to sisters, the preamble makes the first categorical commitment to equality between men and women. The preamble advocates “equality and equal opportunity for citizens, men and women, without discrimination or nepotism (*wisata*), and without favoritism in rights and duties.”³⁷ The Constitution of 2012 was the first of all Egypt’s constitutions to make such a statement. However, this particular clause was ignored or downplayed in discussions of the constitution and in references to its Islamist and unrepresentative nature.

According to Ellen McLarney, “The Morsi government’s adaptation of the liberal language of women’s rights represents the fruition of a long legacy of liberal language developed within the ranks of the Muslim Brotherhood.”³⁸ Previous language on women from the Muslim Brotherhood has tended to be more patriarchal. Yet there has been a general trajectory toward elaborating on the subject of women’s rights in Muslim Brotherhood writings. Whether this is by conviction or out of an attempt to convince others of its own moderation—or a mixture of both—is a matter for debate. Yet the distinction between public discourse and true intentions applies to all political parties seeking office. The former Muslim Brotherhood leader Muhammad al-Hudaybi (general guide 2002–4) argued that a woman has “the same rights as the man regarding participation in parliamentary, legislative and trade union elections. She also has the right to nomination and election at these councils” and he argued that she has the right to any public office, except—not insignificantly—the presidency.³⁹

Muhammad Mursi's 2011 political manifesto, which was called the Renaissance Program, made a commitment to supporting women's greater role in society, in politics, and in other aspects of the country's national development. This springs, it states, "from our belief that woman is equal to man in terms of status and that she compliments him in his work and tasks."⁴⁰ The manifesto calls for removing those factors that hinder the participation of women in all fields of life, for protecting Egyptian women from being harassed in the streets and from discrimination when applying for jobs. It also advocates supporting women who want to set up and run their own businesses and private enterprises and for changing negative attitudes toward women's political participation.⁴¹ There are two important points to note here: the fact that women are seen as necessary for society and national development, just as they were under Gamal 'Abd al-Nasser, and the fact that the Muslim Brotherhood speaks out about harassment and discrimination as a problem to be solved. The harassment of women in the public sphere is one of the pressing challenges facing women in Egypt.

Discussions of the 2012 Constitution's content and clauses included consideration of the clause in Article 11 of the 1971 Constitution that said the state should enable women to balance their duties toward their family with their work in society without contravening the laws of the Islamic sharia. The idea of transferring this clause from the 1971 Constitution and continuing it in the 2012 Constitution was discussed, with the provision being strongly promoted by Salafi members of the Constituent Assembly. However, it was removed after a public uproar. McLarney argues that "the removal of the clause speaks volumes about the liberal ambitions of the Morsi government."⁴² The new government, she argues, clearly intended to show that women's equality is not incompatible with an Islamic society or with a Muslim Brotherhood president.⁴³

Criticisms of the 2012 Constitution also focused on the fact that it did not list "sex" as one of the grounds for prohibiting discrimination, as no grounds are named.⁴⁴ Both Articles 9 and 33 state that citizens are equal before the law without discrimination, although they do not mention particular forms of discrimination. For Mirvat al-Tallawi, who was a member of the Committee of 50 that helped draft the 2014 Constitution, the fact that women are not specifically mentioned here constitutes a failure, although she does not mention the preamble. Read together with Article 10, the failure to specify discrimination on the grounds of gender becomes problematic, she argues.⁴⁵

The most controversial clauses, however, were those that seemed to emphasize women's role in the home and link women with the family, domesticity, and religion. Articles 10 and 11 stated the following:

The family (*al-usra*) is the basis of society and is founded on religion (*al-din*), morality, and patriotism. The state and society desire to preserve the genuine character of the Egyptian family, its cohesion, stability, and to ensure that its moral values are firmly established and are protected. This is according to the law. The state provides mother-and-child services that are free of charge and pledges to reconcile the duties of women toward their families and their work in the public sphere. The state assumes responsibility for caring for and protecting female breadwinners, divorced women, and widows. (Article 10)

The state protects morality, decency, and public order, and a high level of education. It protects religious and national values, scientific truths, the Arabic culture and the historical and civilizational heritage of the people. All this is according to the law. (Article 11)⁴⁶

Critics argued that these two articles would lead to the establishment of a morality police. Diana Serôdio states such clauses are more characteristic of what she calls "theocentric" states.⁴⁷ There was much debate about the phrase "genuine nature" in reference to the family. Secular groups protested against it with particular concern being expressed at the reference to society being responsible for its preservation, fearing that it would lead to the enactment of *hisba*, which refers to the right of an individual to bring a case against someone if that person sees the other person neglecting what is commanded and practicing what is forbidden within Islam.⁴⁸ Human Rights Watch argued against placing the "genuine nature of the family," morality, and public order before fundamental rights. For Human Rights Watch, the state's role should be confined to ensuring equality and nondiscrimination, without interfering with a woman's choices about her life, family, and profession.⁴⁹ Mirvat al-Tallawi lists the reference to balancing duties inside the home with those outside as one of the ways in which the 2012 Constitution failed to "recognize women as citizens with full equality in social, economic, and political rights."⁵⁰

Article 10, however, was not new. The article was strikingly similar to those found in the 1971 Constitution. Zaid Al-Ali argues that "article 10 is copied almost verbatim from article 9 of the 1971 constitution."⁵¹ Thus, rather than representing an attempt to "establish a Saudi-style religious state

by stealth, article 10 is actually the product of offhand copying and pasting by a constituent assembly that was determined to meet a short deadline for completion.⁵² The reference to the fact that it is the job of the state to facilitate the compatibility of work and family duties represented a continuation of the Nasserist expectation that the state must facilitate women's work in the public sphere.

In addition, in critiques of Article 10, very little attention was given to the significance of the second half of the article, in which the state undertakes to provide free services for mothers and children and to protect female breadwinners, divorced women, and widows. According to Nadia Sonneveld, for the first time in its history, the Egyptian government recognized female-only households, thereby exposing the myth that it is always the husband who provides.⁵³ This specifically acknowledged not only the economic vulnerability of divorced women and widows but also that Egyptian women are often the breadwinners of the family. Vast numbers of Egyptian women today take full responsibility for supporting their families.

In late 2013, after the removal of President Muhammad Mursi, a new constitution was drafted by the Committee of 10, made up of jurists and law experts, supported by the Committee of 50, which was to have an advisory role. While the Committee of 50 was overwhelmingly representative of state institutions, the committee tended to be lauded for its greater representation of Egyptian society in general and women in particular. While there were four women on the Committee of 50, and, therefore, the proportion of women was moderately higher, this committee was initially only advisory.⁵⁴ In addition, like most of the members of the committee, these women were representatives of state institutions, created and sponsored by the Egyptian state.

The 2014 Constitution was endorsed by such institutions as the Cairo Institute for Human Rights, which stated that it provided more safeguards for the protection of women; it "improved the status of women by explicitly stating that 'the state guarantees equality between men and women in political, social, and economic spheres.'"⁵⁵ The 2014 Constitution, it argues, also provides for affirmative action to encourage women's political participation.⁵⁶

Indeed, the Constitution of 2014 was explicit on the question of women's political rights and, in that respect, surpassed the Constitution of 2012. Articles 10 and 11 stated the following:

The family (*al-usra*) is the basis of society and is founded on religion (*al-din*), morality, and patriotism. The state desires its cohesion and stability and to ensure that its values take root. (Article 10)

The state provides for equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of the Constitution. The state will work to take responsible measures to guarantee the appropriate representation of women in the representative houses, as specified by law. The state provides for women the right to take up public positions and high administrative positions in the state, and to be nominated for judicial bodies and organizations without discrimination. The state undertakes to protect women against all forms of violence, and enable women to reconcile their duties toward their families with the requirements of work. The state undertakes to protect and make provision for motherhood and childhood, and for breadwinning and elderly women, and for women who are most in need. (Article 11)⁵⁷

The part of Article 10 that referenced society as having a role in protecting the family was removed, and the state alone was allocated this role. Removed also was the part of Article 11 of the 2012 Constitution stating that “the state protects morality, decency, and public order, and a high level of education.”⁵⁸

Mirvat al-Tallawi argues that Article 11 of the 2014 Constitution rectifies the failure of the 2012 Constitution to mention women specifically in reference to the clause making discrimination illegal.⁵⁹ Article 53 outdid the preamble of the 2012 Constitution, stating:

Citizens are equal before the law. They are equal in rights, freedoms, and public duties. They are not to be discriminated against on the basis of religion, belief, sex, origin, race, color, language, disability, social class, political or geographical affiliation or for any other reason. Discrimination and incitement to hatred are crimes that are punishable by law. The state shall take all necessary measures to stop all forms of discrimination, and the law shall organize the creation of an independent commission for this purpose.⁶⁰

However, references to the dignity of women in the preamble and to the uprising of January 25 in the 2012 Constitution were left out of the 2014 Constitution. The statement in the preamble to the 2012 Constitution that referenced “equality before the law and equal opportunities for all citizens, men and women, without discrimination or nepotism, especially in rights and duties” was also dropped.

Hala Kamal argues that, looking at the final draft of the 2014 Constitution, it becomes clear “that this time women’s voices were heard.”⁶¹ She writes that, “aware of the importance of the Constitution in forging our

present and future, we have engaged ourselves with the constitution-writing process and managed to convey our own vision of women's rights and to work together towards inserting them in the Constitution."⁶² Reporting on the turnout to pass the Constitution of 2014 one reporter wrote: "Undeniably, Egyptian women were the stars of the show among the voters. They went down in full force. In Egypt where men and women normally queue separately and where women make up 48.5 percent of the electoral force, the women's queues were considerably longer than the men's. . . . Even more striking was their jubilation at the event. They did not queue to vote in silence; they chattered, sang, ululated and danced in joy."⁶³

Despite differences, however, Articles 10 and 11 have a number of important similarities with the 2012 Constitution. Like the 2012 Constitution, Articles 10 and 11 of the 2014 Constitution ensure the state's obligation to reconcile the duties of a woman toward her family and her work requirements. While mention of the state's role in ensuring this compatibility was criticized in the 2012 Constitution, the clause, Mona Zulficar, a member of drafting committee of the 2014 Constitution, argued, has in fact facilitated a number of constitutional judgments by the Supreme Court to grant women privileges. It is a form of "positive discrimination," she argues, providing, for example, maternity leave, breastfeeding hours, and daycare facilities. So, Zulficar argued, "if we took that out because we wanted to be feminists . . . then we would lose lots of privileges for a lot of women who cannot afford to lose them."⁶⁴ Article 11 of the 2014 Constitution also continues the promise laid out in the 2012 Constitution to "protect and make provision for motherhood and childhood, and for breadwinning and elderly women, and for women who are most in need."⁶⁵

In addition, if one looks at the discussions that took place in the committees drafting the constitutions, the continuities between the drafting processes are even greater. For example, the article that specifically mentioned gender in reference to discrimination was not easily passed. Mirvat al-Tallawi of the National Council for Women was instrumental in getting it through. While the Salafis objected to the clause and al-Azhar did not comment on it, she states that she was taken aback when she encountered opposition from members of the committee who are often identified as liberal. Mirvat al-Tallawi also states that Salafi members of the Committee of 10 wanted a special sharia provision on Article 11—that is, something along the lines of "without contravening the sharia" and that this was presented by the Committee of 10 and was only removed at the stage of consultation with the Committee of 50, following protest from her.⁶⁶ In addition, according to Mona Zulficar, many wanted the commitment to the

proportional representation of women to be put into the section labeled “transitional provisions”—that is, provisions that would at some point be removed, since everyone was reluctant to accept that the state had this obligation. She fought for the measure to guarantee women’s representation.⁶⁷ Significantly, most of Article 10 of the 2012 Constitution, which argued that family is the basis of society, founded on religion, morality and patriotism, was retained in the 2014 Constitution. This has been in every Egyptian constitution since 1956.

Dismantling the Secular/Religious Binary

The debates described in the previous section show that women’s rights became hostage to the tensions that were so central to the 2012 and 2014 constitutional debates. These tensions were framed in terms of an opposition between religious and secular worldviews. Women’s rights and the family were used as a tool to delegitimize and legitimize the 2012 and 2014 Constitutions respectively. Accompanied by considerable virtuous grandstanding and one-upmanship, the issue of women’s rights was used by political actors to assert and deny authority. If constitutions create legitimacy for the state, the debate about women’s rights involved considerable flag-waving.

The point, however, is not to argue that critiques of Islamism and its conservatism were necessarily wrong. In addition, to illustrate the continuities between the two constitutions and the misrepresentations of the 2012 Constitution is not to argue that women have nothing to fear from the social conservatism of a constitution that was written by a predominantly Islamist assembly. However, there were striking similarities between the constitutions in the way that women’s rights were framed and understood. In addition, those constitutional statements would have to be put into law and the compatibility of those laws with the constitutional articles interpreted by the Egyptian judiciary. It also goes without saying that expunging the Muslim Brotherhood from the political scene has not outrooted social conservatism in Egypt.

Here, I would like to pick up on Gregory Starrett’s point, which I discussed in chapter 1, that secularism cannot be a descriptive term but can only be treated as a normative one. In this vein, Malika Zeghal has argued that discourse about secularism and Islamism in Tunisia during the Arab Spring shows the way in which each camp in the debate reified the other.⁶⁸ In looking at contemporary Malaysia, Tamir Moustafa argues that “modern law plays a particularly important role in delineating the secular/religious

dichotomy in the machinery of the modern state.”⁶⁹ He argues that demarcating categories is central to what law does so that “law is an instrument that constructs the twin categories in opposition to one another.”⁷⁰ Such a demarcation is particularly charged in times of considerable flux, such as a postrevolutionary context, when parties use the secular-religious binary to lay claim to new political realities and establish their own legitimacy. In the uncertainty of a postrevolutionary context, the parties involved are even more inclined to use such constructions to situate themselves vis-à-vis others and make claims on the new order.

The fact that the secular/religious binary was able to be utilized to the extent that it was and the fact that the similarities between Islamists and so-called secularists were so easily overlooked do tell us something important about secular constructions of politicized religion in general and about Islamism in particular. Such constructions of the Islamic and the secular show that these critiques fed on a particular temporal understanding of Islamism as somehow antithetical to modern values. Such understandings of Islamism have become internalized and naturalized so as to become an unquestioned tool in public debate. The fact that differences between the constitutions were enlarged to the extent of inspiring moral outrage in part stems from the myth of religious violence. William Cavanaugh argues that the assumption that religion is authoritarian, divisive, and predisposed to irrational violence is a myth that has its origins in the Wars of Religion, when the nascent nation state used the idea that religion is a source of conflict to justify the assertion of its power over the church. Since then, the myth of religious violence has, Cavanaugh argues, been used by state-making elites to marginalize discourse labeled as religious while promoting the idea that the unity of the nation state saves us from the divisiveness of religion.⁷¹

Cavanaugh argues that there would be a number of benefits to retiring the myth of religious violence from respectable discourse. It would liberate valuable empirical work and help us see that Western-style secularism is a contingent and local set of social arrangements and not a universal solution. He also contends that it would help the West understand the non-Western world, undermine a frequent pretext for military action, and mitigate the violence that feeds from such a binary.⁷² Retiring the myth of religious violence might have militated against the nastiness that permeated the Egyptian public sphere.

Yet the binary between the religious and the secular is not simply a Western project that reinforces Western secular interests. It has also become entrenched in modern Islamic thought. The Muslim Brotherhood itself has used such a binary for its own legitimacy by accusing the 2014 Constitution

of secularizing Egypt. Such discourse has in turn served to reinforce the differences between secularists and Islamists. In seeking to establish their own legitimacy, Islamists rail against secularism, although they are more circumspect about describing Egypt as a secular state on account of Article 2. Yet Egypt, including the Muslim Brotherhood, would benefit from eschewing a conceptual frame that defines the constitution and political actors as either secular or religious. In the case of the Egyptian constitution, eschewing the assumption that religion is necessarily more prone to forms of exclusion and discrimination than a situation in which religion is supposedly absent enables one to see the centrality of the concept of the family to Egyptian nationalism as a whole.

This is not to say that there were no differences between the two constitutions. There were differences on the question of women's political rights. This should not be dismissed, since it paved the way for a constitutional amendment in 2019 allocating 25 percent of parliamentary seats to women. Yet the emphasis on political rights is particularly interesting in light of the poor connection between political rights in the constitution and the political rights of Egyptians in reality, given how authoritarian the current military regime is. The discussion of women's political rights was also not connected to the question of class. The Constitution of 2012 pointed to Egypt's class divisions by stipulating that nepotism and favoritism were problems that should be tackled. Not situating the question of women's political rights within the context of political and socioeconomic rights for all suggests that it was partly used as a tool to triumph over the opposition.

What is most striking is the continuity that exists between the Constitution of 2012 and the Constitution of 2014 and between those two constitutions and the Constitutions of 1956 and 1971. The family—and, by association, women—and religion are framed as fundamental to the integrity of the Egyptian state and to Egyptian nationalism. In fact, the family and women are key to maintaining the true nature of Egyptian society. The implications of this are far-reaching. It continues to allow for state intervention in women's lives and in the family and the fashioning of the family as a symbol of religious and cultural authenticity.

Such an emphasis on the family is not specific to Islamist groups. Nor does the insistence on the family constitute some kind of reactionary revival of the sharia. This is not to say that the concept of the family is not a vitally important part of the Islamist reform program. Ellen McLarney has shown how it is. Nor is it to say that many Islamists do not have conservative notions about the family. Yet to point out how the family is not simply an Islamist construct shows that Islamists have responded to the

contemporary importance of the concept of the family and used it as leverage in the same way that others have.

The Interests of the Governed

Dismantling the secular religious binary shows that there was a common underlying assumption held by both parties that the state was the appropriate vehicle for the management of women's rights. There were, of course, some differences. Those who identified themselves as secularists or liberals tended to emphasize that the state—as opposed to society—should save women from the forces of tradition. Such groups were more likely to express unease with the idea of giving society any role to advocate for the family. Society is often seen as a bastion of conservatism from which women need to be saved. This is why references to society's role in preserving the family were eventually removed from Article 10 of the 2014 Constitution. The Coptic churches were opposed to giving society a role to advocate for the family. This was shown in the attitude they took toward Article 10 of the Constitution of 2012. The Coptic churches, like the other members of both committees that drafted the constitutions, supported the commitment to family as the basis of society. Yet there was part of Article 10 of the 2012 Constitution that the Orthodox, Catholic, and Evangelical churches in Egypt objected to in discussions concerning the 2014 Constitution. They jointly issued a document expressing their concern and presented it to judge Mahmoud Mekki, who was then vice president of Egypt. The part of Article 10 they objected to stated that both “state and society” should “preserve the genuine character of the Egyptian family, its cohesion, stability,” and “ensure that its moral values are firmly established and are protected.”⁷³ The document called for deleting the word “community” from the clause that read “the state and the community are committed to preserve the genuine character of the Egyptian family.” The reason for this objection, they said, is that it would allow the community, in addition to the state, to “intervene to defend the genuine character and ethical values of the family.”⁷⁴ This, they argued, could lead to extremist groups acting like morality police in the name of “commanding good and forbidding wrong.”⁷⁵ They argued that such groups make up rules and legislation and “use them to chase members of the community, judge them, and penalise them.”⁷⁶ They insisted that this part of the clause constituted a “time-bomb.”⁷⁷ As a result, the word “community” was deleted from the 2014 Constitution but the commitment to the state's policing and control of family law was maintained.

The Salafis were more supportive of putting a check on the state's ability to regulate women's rights through such clauses as “without contravening

the laws of the sharia,” which implies limits on the state’s legal sovereignty. It was in the realm of women’s rights that there was greater interest in placing more limits on how the sharia would be interpreted. While Article 219 of the 2012 Constitution had partly anchored the principles of the sharia to the four schools of law, this was softer than a more specific reference to “laws.” Thus, the references to women’s rights not contravening rules of the sharia represents something different from the broader idea of principles as expressed in Article 2. It expressed the idea that the state should be bounded in some way to the higher legal authority of the sharia in relation to the family. Thus, for those who advocated it, the family was to serve as the front line in limiting the state’s sovereignty over law. Yet, while this clause existed in the 1971 Constitution, and was advocated by Salafis during the constitution drafting process, it was not insisted upon by the Muslim Brotherhood. In addition, it was also advocated by some—possibly Salafi—members of the Committee of 10 that consulted on the 2014 Constitution.

Beyond this, there was remarkable consistency in the desire for more specific articles that defined the role of state in intervening and regulating women and the family. That the Muslim Brotherhood agreed to omit the clause “without contravening the laws of the sharia” speaks to their acceptance that the locus of legal authority is the state. This is because it opens up or maintains the possibility that women’s rights will not be determined by the sharia as represented by the ulama and the schools of law. This corresponds with the Muslim Brotherhood’s general approach to the question of who has religious authority. As was seen in chapter 4, the Muslim Brotherhood has generally not supported giving Islamic legal authority to a body of religious scholars. While Article 219 of the 2012 Constitution partly anchored the principles of the sharia to the four schools of law, this was something that was insisted upon by the Salafis and not by the Muslim Brotherhood.

In addition, these constitutional articles show that the Muslim Brotherhood has a conception of the state’s role over women and the family that is of considerable pervasiveness and depth. Here, I would like to return to the thinking of the Islamist lawyer and writer, Muhammad Salim al-‘Awwa (b. 1942). In the decade or so leading up to the revolution, al-‘Awwa had exerted considerable influence on the Muslim Brotherhood, particularly on its younger generation. Al-‘Awwa also ran as a candidate in the presidential elections which ended up electing Muhammad Mursi. He is the former secretary-general of the International Union for Muslim Scholars, based in London, and head of the Egyptian Association for Culture and Dialogue.

In his seminal text, *On the Political System of the Islamic State*, al-‘Awwa argues that the “objective of the government in the Islamic state” is to

inculcate “submission to the teachings of Islam in all of its different aspects.”⁷⁸ All government officials, he argues, must adhere to the teachings of Islam. In this respect, the government is to be bounded by the sharia. The state is obliged to achieve a definitive objective, he contends, and that objective is submission to the teachings of Islam. Yet his understanding of what constitutes submission to the teachings of Islam does not specifically refer to the teachings of Islamic jurisprudence as represented in the four schools of law. While he states that the government must adhere to the “provisions of Islam” and that the law the state applies must not contradict those provisions, he does not define the role of the state as limited to those provisions, but rather as enforcing something broader than that.⁷⁹

Al-‘Awwa argues that the role of the government in Islam is to manage and regulate the “interests of the governed.” He states that, “while establishing religion is important” for the Islamic government, “the realization of the interests of the governed in the Islamic state—those of Muslims and non-Muslims—is no less important.”⁸⁰ Establishing continuity between his idea of the interests of the governed and premodern Islamic jurisprudence, he argues that “the majority of jurists of the Islamic sharia agree that the provisions in their entirety and in their details are aimed at realizing the interests of people.”⁸¹ For al-‘Awwa, the concept of *siyasa shar‘iyya* was designed to facilitate the interests of the governed. Thus, he argues, “those in authority—rather Muslims in general—can adopt what is useful and appropriate from any place and take it by the best means to bring about the interests of Muslims.”⁸² Those in charge can adopt from non-Muslim nations and peoples.⁸³ He draws a further parallel between his concept of the interests of the people and the concept of public interest in Western secular states. He argues that what makes the Islamic state singular is that it is bounded by religion—and he says this in a generic sense—whereas the concept of the public interest in secular states is purely based on the whim of the people. Yet what is key here is that al-‘Awwa does not see a difference between the two types of states in terms of the extent of the state’s legal sovereignty over its people. This reflects the broader trend within Islamic revivalist thinking that the state should monopolize legal authority.⁸⁴ Al-‘Awwa’s argument is in line with that of the judge and writer Tariq al-Bishri, who argues that legislation should be made in the national interest. It is only broader principles, such as the idea that rights are not absolute but are restrained by the public interest, which should be taken from Islamic jurisprudence.⁸⁵

Both Muhammad Salim al-‘Awwa and Tariq al-Bishri exercised considerable influence over the formation of Muslim Brotherhood thinking in the

decade or so leading up to the Arab Spring. The Muslim Brotherhood has also shown that it understands the role of an Islamic government in the sense of its role to represent the interests of the governed in a way that transcends the specific regulations of the sharia. This can be seen in Article 10 of the 2012 Constitution, which states that “the state will take care of and protect services for female breadwinners, divorced women, and widows. The state will protect morality, decency, and public order” (Article 10).⁸⁶ This article is notable in that it singles out divorced women, widows, and female breadwinners for specific mention in the constitution. The expressed intention to recognize and ameliorate the economic vulnerability of widows and divorced women is particularly interesting. It represents the Muslim Brotherhood’s understanding that it is the role of the state to be a steward of women’s lives. However, it also represents how the Muslim Brotherhood has adopted a deep and pervasive understanding of the role of the state by utilizing a modern form of *siyasa shar‘iyya*.

The concept of *siyasa shar‘iyya* allowed the ruler to assess public need and deal with areas about which Islamic literature gave little direction. At the same time, under the concept of *siyasa shar‘iyya*, the sharia was a source of negative restrictions on the state’s legislative power.⁸⁷ Ibn Taymiyya’s (d. 1328) conception of *siyasa shar‘iyya* was that a ruler’s law was to be deemed legitimate if it was consistent with the sharia and if the ruler had cooperated with the jurists to ensure that the law did not command people to sin and advanced public welfare.⁸⁸ Mohammed Fadel asserts that ruling politics in the historical doctrines of Sunni law were “entitled to promulgate morally binding positive law” which went beyond “the pre-political rights and duties of the jurists’ law.”⁸⁹ He maintains that jurists held that administrative acts could compel an individual to perform or refrain from doing something that was neither disallowed or compulsory. Such acts had to be, he argued, related to the public good.⁹⁰ Thus, jurists were arguing for the legitimacy of state legislation from within the sharia.

Article 10, which undertakes to provide services for motherhood and to take care of economically vulnerable women, in some respects, represents a form of *siyasa shar‘iyya*. It tries to offset some of the negative consequences of Islamic legal provisions for women and the family as they currently stand. Women, for example, continue to be economically disadvantaged in Islamic divorce law. Kenneth Cuno shows that the Hanafization of Egyptian law in the late nineteenth century had the effect of restricting the possibilities open to women: maintenance for married women became less secure. The Hanafi school held that unpaid maintenance could only be considered a debt that would be collected once the husband had acknowledged it or a judge

prescribed it. The Hanafi school also severely restricted women's access to divorce and did not accept desertion or nonmaintenance as grounds.⁹¹ The 1920 Personal Status Law, Egypt's first sharia-based codification of family law, partially reversed this by drawing on Maliki jurisprudence. While the Personal Status Laws of 1920 and 1929 introduced rules from the Maliki legal school, Hanafi law remained the legislative basis for judicial action on any new case that arose in the courts.⁹² Personal Status Law No. 1 of 2000 affirmed the importance of Hanafi law although it shifted the emphasis to the opinion of the jurist Abu Hanifa himself. While this personal status code introduced *khul'* divorce law, thereby widening women's rights to petition for divorce, it remained contingent on women giving up their dowry and renouncing any financial claims.⁹³ Thus, in divorce law, women remain at a significant economic disadvantage. Women are also disadvantaged in Islamic inheritance law (see chapter 7), which mostly—although not exclusively—gives women half the legacy due the corresponding male heir. In addition, Islamic inheritance law does not privilege the spousal bond, but rather privileges offspring and the extended family. Such laws are based on the assumption that men—or the extended family—economically provide for their wives, mothers, and sisters.

The particular recognition that widows and divorced women are economically vulnerable and that it is the state's obligation to take care of them is therefore a striking acknowledgment of the limits of the way that codified sharia is applied as state-enforced personal status law in Egypt. The fact that the state undertakes to make up for those vulnerabilities has interesting implications for the sharia. The constitutional commitment to aiding widows and divorcées and to acknowledging female breadwinners does not contradict sharia provisions. However, it does supplement them—and point to their limitations—in a way that advances the interests of the people, as al-'Awwa calls for.

Muhammad Qasim Zaman argues that the concept of *maslaha*, the common good or public interest, “was a relatively minor part of the medieval legal tradition.”⁹⁴ He argues that jurists had reservations since “considerations of *maslaha* were often seen as lacking explicit justification in the foundational texts.”⁹⁵ While *maslaha* is an important and recognized concept in Islamic law, its application was subject to strict and complicated rules. Jurists from all schools of law used the concept. Al-Shafi'i was more conservative “for he feared its encroachment upon the importance of the textual sources of the law.”⁹⁶ Malik and Abu Hanifa used it only when texts and consensus could not provide an answer, and Ibn Hanbal allowed it as a subsidiary source of law and saw it as an extension of the goals of the sharia.⁹⁷

Muhammad Qasim Zaman states that the concept of *maslaha* “has come to occupy a substantial space in modern Islamic discourses.”⁹⁸ There has been increased interest in the concept of *maslaha* as legal reforms are sought “in order to meet the needs of the modern conditions of Islamic society.”⁹⁹ Kerr argues that for Rashid Rida *maslaha* was a “basic source of legal interpretation in its own right and is no longer dependent upon the particular indications of textual sources.”¹⁰⁰

Muhammad al-Ghazali (1917–96), for example, contends that Islam grants the ruler the right to “restrict permissible actions (*taqyid al-mubahat*)” on the basis of general welfare or *maslaha*, and that “Islam gave the ruler the right to interfere with regard to permissible acts by forbidding them, if behind this interference was a sound purpose.”¹⁰¹ Al-Ghazali states that “the government—from a religious angle—has the right to suggest what solutions it wishes and to devise what system it wants to guarantee *maslaha*.”¹⁰² What is interesting about al-Ghazali’s reference to the use of *maslaha* is not necessarily that it can be employed, which speaks of an inherent adaptability and flexibility in Islamic law, but that the state or government as opposed to the religious jurists have the right to define and employ *maslaha*. The implication is that religion should serve the state and be subordinate to it. It is interesting that al-Ghazali states that such a provision “guarantees that religion is for the government and not against it” although with the caveat that the government “is intent upon what is correct and strives for justice.”¹⁰³

Article 10 does not constitute a simple continuation from the concept of *siyasa shar‘iyya* in premodern thinking. It was given the status of a constitutional commitment, which advances the clause as a form of state positive legislation that is less pliable than other forms of legislation. It thus goes beyond *siyasa shar‘iyya*, which was designed to supplement and exist alongside the *sharia*. In making a commitment to take care of the economically vulnerable, the article has the potential to influence the way the *sharia* itself is interpreted. While the Tunisian Hanafi mufti Habib Belkhouja has contended that Qur’anic verses on inheritance are clear and are not subject to *ijtihad*, members of the Individual Freedoms and Equality Committee, established in Tunisia in 2016, have argued for equal inheritance for men and women. The committee, which includes a number of jurists, have appealed to the higher objectives of the *sharia* (*maqasid al-shari‘a*) and have argued that inheritance constitutes the conduct of people among themselves (*mu‘amalat*), which is subject to interpretation, as distinct from acts of worship (*ibadat*), which are not.¹⁰⁴ It is, of course, difficult to know if Article 10 expresses an intention to work around some of the existing negative consequences of *sharia* provisions or whether it has the potential to drive the interpretation of the *sharia*

in a particular direction. The relationship between this constitutional statement and the broader one about the principles of the sharia raise the questions of whether specific constitutional provisions can override a general commitment to the sharia and how, precisely, they should work together.

Either way, the constitutional statement concerning caring for widows, divorcées, and female breadwinners reflects an important intervention in the question of what the state's role is vis-à-vis Islamic legal norms. It reflects the assumption that the state is there to serve and reflect the interests of the governed and supplement the sharia in terms of offsetting some of its negative effects. The extent to which—and how—such commitments could impact legislation remains to be seen although it is important to note that the issue of inheritance law for women has received some attention of late. Since 2016 there has been an increase in initiatives to ensure that women actually receive the inheritance they are entitled to by law. A seminar organized by CARE International Egypt was run in Minya in 2016, in which Muslim and Christian clerics, in addition to a number of local politicians, drew attention to the problem of men depriving women of their inheritance rights.¹⁰⁵ The National Council for Women has called for amending Law No. 77 of 1943 to criminalize the willful act of depriving women of their inheritance. The organization has offered to represent women who want to bring lawsuits pro bono.¹⁰⁶

Such organizations are interested in making sure the existing inheritance law is properly applied as opposed to revising the law itself. In addition, a constitutional commitment to offsetting the economic vulnerability of women does not represent any kind of annulment of sharia rules contributing to that vulnerability. Yet it has the potential to do what the Supreme Constitutional Court has been doing since its foundation—directing the sharia to become a relatively liberal form of modern Islamic state law that establishes the absolute authority of state legislation, thus employing, but moving beyond, *siyasa shar'iyya*.

Bruce Rutherford shows that the liberal constitutionalism of the Egyptian Supreme Constitutional Court has a number of similar features to what he defines as Islamic constitutionalism, the concept of Islamic democracy based on a constitution and the balance of powers found in contemporary Islamic thought. Both, he argues, advocate for a strong state and for the state's management of public morality. He demonstrates how the Supreme Constitutional Court has seen facilitating a balance between women's duty to the family and her work in society as one of its constitutional obligations. The Supreme Constitutional Court sees a strong state as necessary for the moral character of society and for protecting the family. The need for a powerful

state that manages and intervenes in the family is one that Islamic constitutionalism and the liberal constitutionalism of the Supreme Constitutional Court share.¹⁰⁷ In making a constitutional commitment to female breadwinners, widows, and divorcées, it can be argued that the Muslim Brotherhood intended to continue to advance such an approach.

The rhetoric surrounding the drafting of the 2012 and 2014 Constitutions emphasized the ways in which the rights and role of women were used to highlight the differences between the two constitutions. This discourse emphasized that the 2012 Constitution was retrograde, Islamist, and patriarchal. Conversely, the Constitution of 2014 was framed as progressive and as a constitution in which women's voices were heard. Yet the Constitution of 2012 had considerable continuity with previous constitutions as the 2014 Constitution had with the 2012 Constitution. This is not to say that there were not important differences. Yet much was made of those differences and little of the similarities. In fact, the parallels are more striking than the differences. This was illustrated in the continuation of a key article (Article 10), first established in the 1956 Constitution, which confirmed that the family is the basis of society. In continuing to emphasize the importance of the family for national well-being, both the 2012 and 2014 Constitutions have retained the state's right—first asserted in the 1956 Constitution—to use women and the family as a symbol of national culture and religion.

The constitutional statement on the family as the basis of society should not be seen as specifically Islamist. Rather, it symbolizes the continuation and consolidation of the idea that the state is the vehicle for the regulation of the family, which started in the Nasserist period. It illustrates the continuation of a convergence between the family, women, and law which both secular and Islamist groups share.

For all Egyptians, gender and the family are a means by which they negotiate Egypt's national identity. Gender and the family have always been—and continue to be—used as a site for negotiating the meaning of what it is to be Egyptian. In seeing the religious and the secular as constructions, one can see how the family and women's rights became hostage to the intensity of the postrevolutionary context in which different parties tried to undermine one another and lay claim to the new political order.

The Muslim Brotherhood's sponsorship of making a constitutional commitment to supporting female breadwinners, divorcées, and widows illustrates that it had adopted the broader concept of the interests of the governed over and beyond the specific regulations of the sharia. In many respects, such an approach is in line with the premodern concept of *siyasa*

shar‘iyya since such a constitutional article did not override Islamic law provisions—it only supplemented them. Yet this use of *siyasa shar‘iyya* is not entirely continuous with its premodern antecedents since making a constitutional commitment to widows and breadwinning women gives such an intention an elevated status that has the implication of shaping—as opposed to simply supplementing—the sharia. In making a constitutional commitment to female breadwinners, widows, and divorcées, it seems as if the Muslim Brotherhood intended to continue along the lines of the Supreme Constitutional Court in advocating a liberal approach to modern Islamic state law that is not necessarily tied to the sharia provisions of premodern schools of law.