

Conclusion

In December 2017, the head of the House of Representative's religious committee, 'Amr Hamrush, suggested proposing a bill to make atheism illegal. Hamrush emphasized "the necessity of criminalizing the phenomenon [of atheism] and of placing it in an article relating to the contempt of religion because atheists have no doctrine and try to insult the divinely revealed religions and do not recognize them."¹ Al-Azhar's Senior Scholars' Council supported the proposal to make atheism a crime, saying that Islam grants the ruler the right to demand that an apostate (*al-mulhid*) repent and, failing that, to execute the apostate in order to preserve Islamic society.²

This proposal received intense opposition and has yet to reach the form of a bill. Yet it is instructive. First, it illustrates one of the ironies of the revolution. The proposal is not entirely dissimilar to Article 44 of the 2012 Constitution, which stated that "insulting or opposing all messengers or prophets is forbidden." However, the December 2017 proposal goes much further than forbidding the public act of insulting religion to actually criminalizing a belief, along with stipulating that the penalty for such a crime should be death. The Muslim Brotherhood and other Islamists were criticized for Article 44, which did not appear in the 2014 Constitution. Criticisms of the 2012 Constitution helped facilitate a counterrevolution and the restoration of the status quo in 2013. 'Amr Hamrush's proposal makes one wonder

whether Egypt has, in a number of respects, become more socially conservative even though the Muslim Brotherhood has been removed from the public sphere. The level of religious conservatism expressed in Hamrush's proposal raises questions about why the Muslim Brotherhood was demonized for its Islamism in the first place.

Al-Azhar paved the way for the discussion of this bill in the years before 2017 by issuing various statements denouncing atheism and warning of its growth in Egypt. Hamrush's proposal shows that, in the postrevolutionary environment, al-Azhar has emerged more definitively as the representative of Islam. While it had always been viewed as the guardian of Islam, since the 1960s its ability to do so had been questioned. It also had to face competing voices such as the Muslim Brotherhood and, since the 1990s, Islamist intellectuals associated with the organization's younger generation. One of these intellectuals is Muhammad Salim al-'Awwa, who maintains that there is no mention in the Qur'an that punishment by death for apostasy should be enforced in this world and asserts that the death penalty contradicts the principle of "no compulsion in religion (2:256)."³

Now that the Muslim Brotherhood has been removed from the public sphere, al-Azhar does not have to face the Muslim Brotherhood's critique of it. Additionally, al-Azhar's right to speak for Islam is constitutionally enshrined. While the Constitution of 2014 affirmed the Supreme Constitutional Court's right to adjudicate on the constitutionality of legislation, the constitution also gave al-Azhar the means to assert itself more as the representative of Islam. There are indications that al-Azhar is doing just that. For example, in 2017, al-Azhar opposed suggestions made by President 'Abd al-Fattah al-Sisi for an amendment to the personal status law requiring divorces to be registered with an authorized state official. This would have effectively made verbal divorce, which is allowed by the sharia, illegal. Al-Azhar's refusal to endorse the amendment illustrates that al-Azhar intends to guard its new constitutionally designated sphere.

Some contend that the constitutional commitment to al-Azhar's right to speak for Islam in a way that is not constitutionally binding returns al-Azhar to its historical role. Yet, in premodern Islamic systems, the sharia and state law were not so closely intertwined. In many respects, they were parallel and worked alongside one another. Yet a constitutional commitment to the sharia and to the role of al-Azhar has more specifically subordinated the sharia to modern Islamic state law. Al-Azhar currently finds itself in a precarious position balancing two inclinations: (1) to stand beyond politics and represent Islam from outside of the political process, drawing on premodern conceptions of the necessity for there to be distance between the scholar and

the ruler, and (2) to shape modern Islamic state law in a way that adheres to its vision of Islam. These two potentially contradictory inclinations show the ways in which the relationship between the sharia and modern Islamic state law is deeply fraught and will likely be so for the foreseeable future.

‘Amr Hamrushi’s proposal to criminalize atheism is also instructive because it implies that Judaism and Christianity can, like Islam, be blasphemed. It illustrates how the constitutional commitment to the heavenly religions has the potential to shape future legislation. The idea of the divinely revealed religions has become a national cultural concept and a key component of Egyptian nationalism. Christianity, represented by the Coptic Orthodox Church, has become more deeply intertwined with Islam in Egypt. Yet it is an Egyptian nationalism that is focused on religious communities as opposed to autonomous individuals. Article 3 and the concept of the divinely revealed religions have strengthened the authority of the church over the Coptic people. In the process, secular Copts who want to de-emphasize the leadership of the church and advance the principles of citizenship and legal equality have been sidelined. The concept of the divinely revealed religions has therefore created new forms of inclusion and exclusion by connecting Christianity and Islam and by excluding Baha’is and people of no religion in the process.

The constitutional commitment to the heavenly religions has thus resulted in a stronger alliance—at least for now—between the regime and the church than had existed under the Ottoman Empire. Coptic Orthodox Christianity, centered on the church, has, particularly since the coup against Muhammad Mursi in 2013, experienced more official and stronger forms of state recognition. This can be seen in the Egyptian government’s hitherto absent support for church construction. This is not to deny the vulnerability of Copts with respect to the state itself and the Muslim majority, but it is to say that the church has achieved new levels of official, rhetorical, and legal recognition.

The introduction of Article 2 to the 1971 Constitution first raised this question: What are the precise ways in which the sharia and specific constitutional provisions work together? In the case of women and the family, the constitutional commitment to taking care of widows, divorcées, and bread-winning women, first seen in the Constitution of 2012, raises an important question about the relationship between the sharia and other constitutional commitments. A promise to provide for economically vulnerable women can be seen as a form of *siyasa shar‘iyya*, whereby the state can supplement the sharia when it is in the public interest in a way that does not contradict the sharia. The concept of *siyasa shar‘iyya* enabled the premodern Islamic polity to legislate in a way that did not go against the sharia. Yet the assumption is that the sharia and state law would work alongside one another and

remain distinct. This constitutional commitment to the economic vulnerability of women did not annul the provisions of the sharia that contribute to this economic vulnerability. Yet it raised the question of how the commitment to the sharia could be balanced with other constitutional articles. Such balancing is subject to the interpretation of the Supreme Constitutional Court, which has generally rejected the idea that the sharia can override positive state legislation. The court has also taken a liberal and flexible approach to what constitutes the principles of the sharia. In making a constitutional commitment to female breadwinners, women, and divorcées, it looked as if Muslim Brotherhood intended to continue along the lines of the Supreme Constitutional Court's approach to modern Islamic state law. The constitutional commitment to economically vulnerable women showed that the organization embraces a broader sense of public interest that is not tied to the sharia provisions of the premodern schools of law. Rather than being reactionary, the Muslim Brotherhood actually represents a particularly modern convergence between family, religion, law, and culture.

The full ramifications of the constitutional articles discussed in this book have yet to be seen. One consequence, however, is already clear. The commitment to the personal status law of Christians in Article 3 has enabled the Copts to become more assertive over communal law. Some Copts are beginning to petition for an exemption from Islamic inheritance law in the name of gender equity. In so doing, they are rearticulating what Christianity in Egypt is. Thus, while the commitment to the concept of the divinely revealed religions has formed a basis upon which Christians and Muslims can unite, that same commitment has given leverage to Copts to emphasize religious difference. It might seem that Copts' petitioning for the widening of personal status law to include inheritance constitutes a revival of the judicial autonomy of non-Muslims under the Ottoman Empire and before. However, the question of judicial autonomy is now subject to a different set of requirements that have different ramifications for the Egyptian public sphere. Negotiating an exemption from national law involves making the case that the area that is to be exempt is compelling enough to be granted an exemption. Thus, Copts have to make the case that gender equality is an essential principle of Christianity. This, in turn, involves addressing whether the essential principles of Christianity should be measured by the Gospels or other texts from the Bible, or by Coptic customary law. Whether customary laws that have been allowed to lapse can be revived, and whether reviving them will contravene the Egyptian public order, including respecting the feelings of the Muslim majority, remains to be legally adjudicated.

In closely addressing the case studies of al-Azhar and religious authority, the concept of the divinely revealed religions, women's rights, and judicial autonomy and inheritance, this book has shown how norms and ideas, which are rooted in the sharia and in premodern Islamic history, are constantly interacting with the evolving needs of the modern nation state. When constitutional commitments are made to the sharia, the sharia is not transformed but rather is recast. Modern Islamic state law therefore constitutes neither a break from—nor a continuation with—what went before. Modern Islamic state law is the result of a reworking of legal norms derived from the sharia. When Islamic legal norms are applied in constitutions, those norms become recast because they are subject to the state's need to articulate a national culture and to speak in the name of the national will. It is the state's need to delineate a national culture—through which it claims the right to represent its citizens—that imposes particular demands on the populace. Constitutions are an expression of those demands which work on and through law to produce particular outcomes.

This results in some aspects of the sharia being brought to bear on modern Islamic state law, while others are deemphasized. It is not possible to say that the sharia determines the form that modern Islamic state law takes. Nor is it possible to say that the sharia submits to the law of the state as the artist of the mural with which I opened this book seems to advocate. The sharia does not operate in a monolithic way. Rather, it is more accurate to say that some aspects of the sharia influence the form that modern Islamic state law takes while others are made subordinate to the needs of modern Islamic state law.

In showing the particular forms that the sharia takes when it is applied as modern Islamic state law, I do not imply that these forms are static and unchanging. Quite the contrary. The relationship between the sharia and modern Islamic state law is subject to constant negotiation. As the needs of the modern Egyptian state change, other sharia-influenced laws, hitherto perhaps dormant, may be worked into modern Islamic state law. The political and legal landscapes of contemporary Egypt have changed considerably in the last decade. It is highly probable that they will continue to undergo rapid change given Egypt's underlying political and economic instability. The events described in this book show how brittle political systems can be. The energy that was spent trying to capture what Egypt stands for in the constitutional debates points to the deep divisions in Egyptian society. It is quite possible that under different circumstances, other less palatable legacies of the sharia—such as al-Azhar's statement on apostasy—will be invoked and referred to in constitutional and legal debates. These laws and attitudes

will no doubt serve the needs of those who are—at any given time—trying to shape the state. This does not mean that the sharia in itself needs to be feared so much as what individuals choose to do with it. So, when the needs of contemporary Egypt change—as they no doubt will—it is likely that modern Islamic state law will change as some aspects of the sharia are minimized while others are revived and invoked.