

# NOTES

## Introduction

1. Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 51.
2. *Dustur jumhuriyyat misr al-'arabiyya* (2012).
3. Ragab Saad and Moataz El Fegiery, "Citizenship in Post-Awakening Egypt: Power Shifts and Conflicting Perceptions," 1–2, *Democracy and Citizenship in North Africa after the Arab Awakening: Challenges for EU and US Foreign Policy* (Euspring: January 2014).
4. "Separating Law and Politics Challenges to the Independence of Judges and Prosecutors in Egypt," International Bar Association Human Rights Institute (IBAHRI), February 2014. Of course, this was not the only narrative that surrounded the promulgation of the Constitution of 2012. However, it was the dominant one—both in the Egyptian media and in the foreign press—and one that resulted in a considerable exercise of political power. For a very alternative narrative, see Amani Abu al-Fadl Faraj's book. Abu al-Fadl Faraj was a member of the Constituent Assembly that drafted the 2012 Constitution. She argues that there was a conflict on the committee between supporters of national sovereignty and the malignant agents of globalization, who wanted Egypt to enter into the "New World Order." Amani Abu al-Fadl Faraj, *Min kawalis al-dustur: sira' al-siyada al-wataniyya wa-l-irada al-dawliyya dakhil dustur misr* [From the scenes of the Constitution: The struggle between national sovereignty and the international will inside Egypt's Constitution] (Cairo: nahdat al-misr, 2013).
5. *Dustur jumhuriyyat misr al-'arabiyya* (2012).
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7. Zaid Al-Ali, "The New Egyptian Constitution: An Initial Assessment of Its Merits and Flaws," *Open Democracy*, December 26, 2012.
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9. Graeme Wood, "What Isis Really Wants," *Atlantic*, March 2015.
10. Hallaq, *Impossible State*; Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012); Saba Mahmood, *Religious Difference in a Secular Age: A Minority Report* (Princeton, NJ: Princeton University Press, 2015).
11. Andrew March, "What Can the Islamic Past Teach Us about Secular Modernity?," *Political Theory* 43, no. 6 (2015): 848.
12. Khaled Fahmy, *In Quest of Justice: Islamic Law and Forensic Medicine in Modern Egypt* (Oakland: University of California Press, 2018), 179–226.

13. Mahmood, *Religious Difference in a Secular Age*.
14. Hallaq, *Impossible State*, 89, ix.
15. Nimer Sultany, *Law and Revolution: Legitimacy and Constitutionalism after the Arab Spring* (Oxford: Oxford University Press, 2017), xxx.
16. Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003), 25, 1–2.
17. Elizabeth Shakman Hurd, *The Politics of Secularism in International Relations* (Princeton, NJ: Princeton University Press, 2008).
18. Agrama, *Questioning Secularism*, 27–32.
19. Saba Mahmood, “Religious Freedom, the Minority Question, and Geopolitics in the Middle East,” *Comparative Studies in Society and History* 54, no. 2 (2012): 419, 423–24; Humeira Iqtidar, “State Management of Religion in Pakistan and Dilemmas of Citizenship,” *Citizenship Studies* 16, no. 8 (2012): 1014, 1022.
20. Tamir Moustafa, *Constituting Religion: Islam, Liberal Rights, and the Malaysian State* (Cambridge: Cambridge University Press, 2018), 4.
21. Nathalie Bernard-Maugiron, “Legal Reforms, the Rule of Law, and Consolidation of State Authoritarianism under Mubarak,” in Arjomand and Brown, *Rule of Law, Islam, and Constitutional Politics*, 179–206; Nathan J. Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (Albany: State University of New York Press, 2002); Mustafa Kamel Al-Sayyid, “Rule of Law, Ideology, and Human Rights in Egyptian Courts,” in Arjomand and Brown, *Rule of Law, Islam, and Constitutional Politics*, 211–32.
22. Bruce K. Rutherford, *Egypt after Mubarak: Liberalism, Islam, and Democracy in the Arab World* (Princeton, NJ: Princeton University Press, 2008); Pietro Longo, *Theory and Practice in Islamic Constitutionalism: From Classical Fiqh to Modern Systems* (Piscataway, NJ: Gorgias Press, 2019).
23. Sultany, *Law and Revolution*, xxv.
24. Timothy Mitchell, *Colonizing Egypt* (Berkeley: University of California Press, 1991); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1998).
25. Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge: Cambridge University Press, 2011), 4.
26. Moustafa, *Constituting Religion*, 2.
27. Moustafa, *Constituting Religion*, 3.
28. Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, NJ: Princeton University Press, 2005), 1.

## 1. Constitutions, National Culture, and Rethinking Islamism

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2. Amin, *Mihnat al-dunya wa-l-din fi misr*, 9.
3. Amin, *Mihnat al-dunya wa al-din fi misr*, 11–12.
4. Nathan J. Brown, *Constitutions in a Nonconstitutional World*, 9.
5. Lerner, *Making Constitutions in Deeply Divided Societies*, 16.
6. UK, Canada, New Zealand, Israel, and Saudi Arabia.
7. Brown, *Constitutions in a Nonconstitutional World*, xiii.

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9. Catharine A. MacKinnon, “Gender in Constitutions,” in Rosenfeld and Sajó, *Oxford Handbook of Comparative Constitutional Law*, 401, 407.
10. Martin Krygier, “Rule of Law,” in Rosenfeld and Sajó, *Oxford Handbook of Comparative Constitutional Law*, 242.
11. Lerner, *Making Constitutions in Deeply Divided Societies*, 16.
12. Krygier, “Rule of Law,” 234.
13. Bernard-Maugiron, “Legal Reforms, the Rule of Law,” 181, 200.
14. Brown, *Constitutions in a Nonconstitutional World*, 9, 98–99, 195.
15. Hannah Arendt, *Between Past and Future: Six Exercises in Political Thought* (New York: Viking Press, 1961), 120.
16. Arendt, *Between Past and Future*, 139.
17. Arendt, *Between Past and Future*, 140.
18. Arendt, *Between Past and Future*, 140–41.
19. Thomas C. Grey, “The Constitution as Scripture,” *Stanford Law Review* 37, no. 1 (November 1984): 17.
20. Ulrich K. Preuss, “Constitutional Powermaking for the New Polity: Some Deliberations on the Relations between Constituent Power and the Constitution,” in Rosenfeld, *Constitutionalism, Identity, Difference, and Legitimacy*, 143–45.
21. Mitchell, *Colonizing Egypt*, xiii.
22. Mitchell, *Colonizing Egypt*, xiii, 32–33.
23. Mitchell, *Colonizing Egypt*, 12.
24. Mitchell, *Colonizing Egypt*, 13, 33.
25. J. C. Scott, *Seeing Like a State*, 2.
26. J. C. Scott, *Seeing Like a State*, 32.
27. J. C. Scott, *Seeing Like a State*, 32, 55, 35.
28. J. C. Scott, *Seeing Like a State*, 32, 55, 78, 22.
29. J. C. Scott, *Seeing Like a State*, 91.
30. J. C. Scott, *Seeing Like a State*, 82.
31. Lerner, *Making Constitutions in Deeply Divided Societies*, 6.
32. Lerner, *Making Constitutions in Deeply Divided Societies*, 40, 62–63.
33. Brown, *Constitutions in a Nonconstitutional World*, 97.
34. Brown, *Constitutions in a Nonconstitutional World*, 11.
35. Saïd Amir Arjomand, “Constitutions and the Struggle for Political Order: A Study in the Modernization of Political Traditions,” *European Journal of Sociology* 33, no. 1 (1992): 40.
36. Arjomand, “Constitutions and the Struggle for Political Order,” 46.
37. Brown, *Constitutions in a Nonconstitutional World*, 11.
38. Hallaq, *Impossible State*, 45.
39. Hallaq, *Impossible State*, 96.
40. David Lloyd and Paul Thomas, *Culture and the State* (New York: Routledge, 1998), 10.
41. Lloyd and Thomas, *Culture and the State*, 3.
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44. Hallaq, *Impossible State*, 38.

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48. James McDougall, “This ‘Will of the People’ Talk Must Stop—We Need a Better Democracy Than That,” *New Statesman*, February 7, 2017.

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51. Asad, “Thinking about Tradition,” 206.

52. Asad, “Thinking about Tradition,” 195.

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62. Toft, Philpott, and Shah, *God’s Century*, 79.

63. Hussein Ali Agrama, “Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular or a Religious State?,” *Comparative Studies in Society and History* 52, no. 3 (2010): 499.

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66. Asad, *Formations of the Secular*, 2.

67. Agrama, *Questioning Secularism*, 21, 42–68.

68. As an example, see Sami Zubaida, *Law and Power in the Islamic World* (London: I. B. Tauris, 2005), 170.

69. Agrama, *Questioning Secularism*, 102.

70. Fahmy, *In Quest of Justice*, 183.

71. Ghazzālī [Ḥujjat al-Islām Abū Ḥāmid Muḥammad Ghazzālī Ṭūsī], *Al-Ghazzali on Enjoining Good and Forbidding Wrong*, trans. Muhammad Nur Abdus Salam (Chicago: Great Books of the Islamic World, 2002), 6.

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73. Agrama, "Secularism, Sovereignty, Indeterminacy," 503.
74. Agrama, "Secularism, Sovereignty, Indeterminacy," 502.
75. Also see Hurd, *Politics of Secularism*.
76. March, "What Can the Islamic Past Teach Us," 846.
77. March, "What Can the Islamic Past Teach Us," 847, quoting Agrama, *Questioning Secularism*, 33.
78. Gregory Starrett, "The Varieties of Secular Experience," *Comparative Studies in Society and History* 52, no. 3 (2010): 644–45.
79. Starrett, "Varieties of Secular Experience," 628.
80. Starrett, "Varieties of Secular Experience," 628, 648.
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82. Zeghal, "Competing Ways of Life," 263.
83. Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: John Hopkins University Press, 1993), 18.
84. Yusuf al-Qaradawi, *Min fiqh al-dawla fi al-Islam* [On the jurisprudence of the state in Islam] (Cairo: dar al-shuruq, 1997), 89, 91.
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86. Agrama, "Secularism, Sovereignty, Indeterminacy," 501.
87. Agrama, *Questioning Secularism*, 27.
88. Zeghal, "Competing Ways of Life," 258.

## 2. The Sharia as State Law

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2. Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996), xiv.
3. Mohammed Fadel, "Islamic Law Reform: Between Reinterpretation and Democracy," *Yearbook of Islamic and Middle Eastern Law*, ed. Martin Lau and Faris Nasrallah, 18, no. 1 (2013–15): 44–45.
4. John Scott, "Judicial Reform in Egypt," *Journal of the Society of Comparative Legislation* 1, no. 2 (July 1899): 16.
5. Jackson, *Islamic Law and the State*, xv.
6. Hallaq, *Impossible State*, 10, 51.
7. Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad 'Abduh and Rashīd Riḍā* (Berkeley: University of California Press, 1966), 1.
8. Lawrence Rosen, *The Justice of Islam: Comparative Perspectives on Islamic Law and Society* (Oxford: Oxford University Press, 2000), 161–62, 182.
9. Shmuel Moreh, "Al-Jabarti's Attitude towards the 'Ulama' of His Time," in *Guardians of Faith in Modern Times: 'Ulama' in the Middle East*, ed. Meir Hatina (Leiden: Brill, 2008), 57.
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11. Al-Mawardi, *The Ordinances of Government* [*Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya*], trans. Wafaa H. Wahba (London: Garnet, 1996), 16.
12. al-Misri, *Reliance of the Traveller*, 639, 646–7.

13. Asifa Quraishi, “The Separation of Powers in the Tradition of Muslim Governments,” in Grote and Röder, *Constitutionalism in Islamic Countries*, 63, 72.
14. Zubaida, *Law and Power in the Islamic World*, 79.
15. Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 69–70.
16. Kerr, *Islamic Reform*, 8.
17. Lawrence Rosen, *The Anthropology of Justice: Law and Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989), 61.
18. Johansen, *Contingency in a Sacred Law*, 212–13.
19. Jackson, *Islamic Law and the State*, 192, 226, 213.
20. Fadel, “Islamic Law Reform,” 79.
21. Zubaida, *Law and Power in the Islamic World*, 79, 51, 43.
22. Aharon Layish, “Islamic Law in the Modern World: Nationalization, Islamization, Reinstatement,” *Islamic Law and Society* 21 (2014): 295.
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24. Imam Ibn Taymiyyah, *The Political Shariyah on Reforming the Ruler and the Ruled* (N.p.: dar ul fiqh, 2000), 244.
25. Lombardi, *State Law as Islamic Law*, 50.
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27. Quraishi, “Separation of Powers,” 66–69.
28. Quraishi, “Separation of Powers,” 70.
29. Quraishi, “Separation of Powers,” 65, 70.
30. Sherman A. Jackson, “The Islamic Secular,” *American Journal of Islamic Social Sciences* 34, no. 2 (2017): 1–38.
31. Fadel, “Islamic Law Reform,” 50.
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33. Lombardi, *State Law as Islamic Law*, 54.
34. Zubaida, *Law and Power in the Islamic World*, 104, 107, 111.
35. Ahmet T. Kuru, *Islam, Authoritarianism, and Underdevelopment: A Global and Historical Comparison* (Cambridge: Cambridge University Press, 2019); Zubaida, *Law and Power in the Islamic World*, 60, 103.
36. Zubaida, *Law and Power in the Islamic World*, 115.
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40. Jackson, *Islamic Law and the State*, 96.
41. Jackson, *Islamic Law and the State*, xxx, 73, 76, 78, 108. Jackson also points out that, “contrary to the common assumption that *taqlīd* constitutes a decline to a more primitive stage of development, it is in this very process of legal scaffolding that a legal tradition reaches the height of innovative acumen.” Jackson, *Islamic Law and the State*, 99.

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43. Khaled Abou El Fadl, “The Centrality of Shari‘ah to Government and Constitutionalism in Islam,” in Grote and Röder, *Constitutionalism in Islamic Countries*, 57–61.
44. Zubaida, *Law and Power in the Islamic World*, 42–43.
45. Kenneth M. Cuno, *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (Syracuse, NY: Syracuse University Press, 2015), 125–26.
46. Jackson, *Islamic Law and the State*, xxv.
47. Jackson, *Islamic Law and the State*, xx.
48. Jackson, *Islamic Law and the State*, xx.
49. Jackson, *Islamic Law and the State*, 72.
50. Jackson, *Islamic Law and the State*, 72, xix.
51. Zubaida, *Law and Power in the Islamic World*, 64–65.
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60. Simon A. Wood, *Christian Criticisms, Islamic Proofs: Rashid Rida’s Modernist Defense of Islam* (Oxford: Oneworld, 2012), 203.
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62. Tariq al-Bishri, *Al-Wad‘ al-qanuni bayna al-shari‘a al-islamiyya wa-l-qanun al-wad‘i* [The legal foundation between the Islamic sharia and positive law] (Cairo: dar al-shuruq, 2005), 48.
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64. Benjamin Akzin, “Codification in a New State: A Case Study of Israel,” *American Journal of Comparative Law* 5, no. 1 (Winter 1956): 50.
65. Zubaida, *Law and Power in the Islamic World*, 125.
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69. C. V. Findley, “Medjelle,” in *The Encyclopaedia of Islam*, ed. P. Bearman et al., 2nd ed. (Leiden: Brill, 1991), 971–72.
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85. L. Wood, *Islamic Legal Revival*, 42.
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87. Zubaida, *Law and Power in the Islamic World*, 133.
88. Cuno, *Modernizing Marriage*, 158.
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90. Brown, *Rule of Law in the Arab World*, 58.
91. Asad, *Formations of the Secular*, 215.
92. Brown, *Rule of Law in the Arab World*, 32–33.
93. Kerr, *Islamic Reform*, 16, 218.
94. Mohammad Fadel, "Judicial Institutions, the Legitimacy of Islamic State Law and Democratic Transition in Egypt: Can a Shift toward a Common Law Model of Adjudication Improve the Prospects of a Successful Democratic Transition?," *International Journal of Constitutional Law* 11, no. 3 (2013): 653.
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97. Lev E. Weitz, *Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam* (Philadelphia: University of Pennsylvania Press, 2018), 7.
98. Weitz, *Between Christ and Caliph*, 10.
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100. Weitz, *Between Christ and Caliph*, 43.
101. Weitz, *Between Christ and Caliph*, 28.
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104. Berkes, *Development of Secularism in Turkey*, 97–98, 109, 132, 147.
105. Isaac S. Shiloh, “Marriage and Divorce in Israel,” *Israel Law Review* 5, no. 4 (1970): 480; Zeina Ghandour, “Religious Law in a Secular State: The Jurisdiction of the Sharī‘a Courts of Palestine and Israel,” *Arab Law Quarterly* 5, no. 1 (1990): 29–30.
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108. Berkes, *Development of Secularism in Turkey*, 170–71.
109. Jamal J. Nasir, *The Islamic Law of Personal Status* (The Hague: Kluwer Law International, 2002), 34.
110. Elgawhary, “Restructuring Islamic Law,” 34.
111. Asad, *Formations of the Secular*, 211.
112. Cuno, *Modernizing Marriage*, 185–204.
113. Kerr, *Islamic Reform*, 216.
114. Elgawhary, “Restructuring Islamic Law,” 38, 45, 80.
115. Muhammad ‘Abduh, “Laws Should Change in Accordance with the Conditions of Nations and the Theology of Unity,” in Kurzman, *Modernist Islam*, 52–53.
116. ‘Abduh, “Laws Should Change,” 52–53.
117. Elgawhary, “Restructuring Islamic Law,” 166.
118. Elgawhary, “Restructuring Islamic Law,” 217.
119. Cuno, *Modernizing Marriage*, 183.
120. Brown, *Rule of Law in the Arab World*, 62. Brown argues that Islamic modernists, along with liberals, nationalists, and socialists, did not object to the idea of bringing these personal status courts into a single unified legal structure (64).
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123. Safran, “Abolition of Sharī‘ Courts in Egypt,” 21–22.
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125. Hallaq, “Juristic Authority vs. State Power,” 243.
126. L. Wood, *Islamic Legal Revival*, 5.
127. Fahmy, *In Quest of Justice*, 117–23.
128. L. Wood, *Islamic Legal Revival*, 48, 58, 5.
129. L. Wood, *Islamic Legal Revival*, 5.
130. L. Wood, *Islamic Legal Revival*, 47.
131. Kerr, *Islamic Reform*, 195–96.
132. Kerr, *Islamic Reform*, 185, 200.
133. Hussin, *Politics of Islamic Law*, 35.
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135. Hussin, *Politics of Islamic Law*, 37.
136. al-Qaradawi, *Min fiqh al-dawla*, 13, 18.
137. al-Qaradawi, *Min fiqh al-dawla*, 19–20.
138. al-Qaradawi, *Min fiqh al-dawla*, 31.
139. al-Qaradawi, *Min fiqh al-dawla*, 51.
140. Armando Salvatore, “After the State: Islamic Reform and the ‘Implosion’ of *shari‘a*,” in *Muslim Traditions and Modern Techniques of Power*, ed. Armando Salvatore (Münster: Lit Verlag, 2001), 128.
141. Salvatore, “After the State,” 128.
142. Salvatore, “After the State,” 128.
143. Salvatore, “After the State,” 123, 128, 130.
144. Salvatore, “After the State,” 135n9.
145. Lombardi, *State Law as Islamic Law*, 60.
146. Salvatore, “After the State,” 128.
147. An-Na‘im, *Islam and the Secular State*, 7.
148. An-Na‘im, *Islam and the Secular State*, 7.
149. An-Na‘im, *Islam and the Secular State*, 1.
150. An-Na‘im, *Islam and the Secular State*, 18.
151. Rutherford, *Egypt after Mubarak*, 106.
152. Tariq al-Bishri, *Bayn al-jami‘a al-diniyya wa-l-jami‘a al-wataniyya fi al-fikr al-iyasi* [Between the religious community and the national community in political thought] (Cairo: dar al-shuruq, 1998), 34.
153. Tariq al-Bishri, *Al-Muslimun wa-l-aqbat fi ‘itar al-jama‘a al-wataniyya* [Muslims and Copts in the framework of national community] (Cairo: dar al-shuruq, 1988), 681.
154. al-Bishri, *Al-Muslimun wa-l-aqbat*, 681, 706.
155. al-Bishri, *Bayn al-jami‘a al-diniyya*, 35.
156. al-Bishri, *Al-Muslimun wa-l-aqbat*, 688, 705–6.
157. Tariq al-Bishri, interview by author, Cairo, 2003.
158. “Hizb al-hurriya wa-l-‘adala: Hadha al-barnamij” [Freedom and Justice Party: This program], November 2011.
159. “Hizb al-hurriya wa-l-‘adala.”
160. Kuru, *Islam, Authoritarianism, and Underdevelopment*, 3–4.

### 3. Constitution Making in Egypt

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2. Ergun Özbudun, *The Constitutional System of Turkey: 1876 to the Present* (New York: Palgrave Macmillan, 2011), 3.
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4. The Ottoman Constitution (1876).
5. The Ottoman Constitution (1876).
6. Al-Dustur al-masri li-sanat 1882.
7. Brown, *Constitutions in a Nonconstitutional World*, 31–32.
8. Such a perspective holds that the Khedive Muhammad ‘Ali (1769–1849) played a key role in the development of Egyptian nationalism. It argues that Muhammad ‘Ali

founded a dynasty that was to rule Egypt until 1952 and started a process of modernization that laid the foundations for the development of the modern Egyptian state. Afaf Lutfi Al-Sayyid Marsot, *A Short History of Modern Egypt* (Cambridge: Cambridge University Press, 1994), 53.

9. Khaled Fahmy, *All the Pasha's Men: Mehmed Ali, His Army and the Making of Modern Egypt* (Cairo: American University in Cairo Press, 2002).

10. Will Hanley, *Identifying with Nationality: Europeans, Ottomans, and Egyptians in Alexandria* (New York: Columbia University Press, 2017), 238–40.

11. Nathan J. Brown, "Islam in Egypt's Cacophonous Constitutional Order," in Arjomand and Brown, *Rule of Law, Islam, and Constitutional Politics*, 236.

12. Brown, *Constitutions in a Nonconstitutional World*, 32–33. This was partly because European powers encouraged enhancing the power of the state rather than limiting it (62).

13. Hanley, *Identifying with Nationality*, 294.

14. Mervat F. Hatem, "The Pitfalls of the Nationalist Discourses on Citizenship," in *Gender and Citizenship in the Middle East*, ed. Suad Joseph (Syracuse, NY: Syracuse University Press, 2000), 33.

15. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 38.

16. Hasan al-Banna, "Risalat al-mu'tamar al-khamis" [Message of the fifth conference], in *Wikibidia al-ikhwan al muslimin* (ikhwanwiki.com, 1939).

17. al-Banna, "Risalat al-mu'tamar al-khamis."

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19. B. L. Carter, *The Copts in Egyptian Politics* (London: Croom Helm, 1986), 130–31.

20. *Dustur misr li-sanat 1923*.

21. Brown, *Constitutions in a Nonconstitutional World*, 180–81.

22. Brown, "Islam in Egypt's Cacophonous Constitutional Order," 236.

23. al-Banna, *Majmu'at rasa'il al-imam al-shahid Hasan al-Banna*, 188–89.

24. Samir Marcos, *Al-Akhar . . . al-hiwar . . . al-muwatana* [The other . . . dialogue . . . citizenship] (Cairo: maktabat al-shuruq al-dawliyya, 2005), 166.

25. Carter, *Copts in Egyptian Politics*, 290, 299.

26. Paul Sedra, "Copts and the Millet Partnership: The Intra-Communal Dynamics behind Egyptian Sectarianism," *Journal of Law and Religion* 29, no. 3 (2014): 496–97.

27. Carter, *Copts in Egyptian Politics*, 303.

28. Carter, *Copts in Egyptian Politics*, 131.

29. *Dustur jumhurriyat misr* (1956).

30. *Dustur jumhurriyat misr* (1956).

31. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 48.

32. Brown, *Constitutions in a Nonconstitutional World*, 79.

33. Brown, *Rule of Law in the Arab World*, 76.

34. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 48.

35. *Dustur jumhurriyat misr* (1956).

36. *Dustur jumhurriyat misr* (1956).

37. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 48.

38. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 48.

39. Hatem, "Pitfalls of the Nationalist Discourses on Citizenship," 53.

40. Brown, *Constitutions in a Nonconstitutional World*, 80.
41. Dustur jumhurriyat misr al-‘arabiyya li-sanat 1971.
42. Dawood I. Ahmed and Tom Ginsburg, “Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions,” *Virginia Journal of International Law* 54, no. 3 (2013): 59–60, University of Chicago Public Law Working Paper No. 477.
43. Brown, *Constitutions in a Nonconstitutional World*, 82.
44. Dustur jumhuriyyat misr al-‘arabiyya li-sanat 1971.
45. Dustur jumhuriyyat misr al-‘arabiyya li-sanat 1971.
46. Nathan J. Brown, “The Transition: From Mubarak’s Fall to the 2014 Presidential Election,” in Hokayem, *Egypt after the Spring*, 18.
47. Brown, “Transition,” 20.
48. “‘We Do Unreasonable Things Here’: Torture and National Security in Al-Sisi’s Egypt.”
49. Preuss, “Constitutional Powermaking,” 148, 160.
50. After the suspension of the 1971 Constitution, there was also a protracted initial debate about whether it should be amended. In March 2011, the Supreme Council of Armed Forces held a constitutional referendum about amending some articles of the 1971 Constitution. While the referendum was passed with 77 percent of the votes, with Islamists supporting it, opponents insisted that the revolution had ousted not only Mubarak but also the constitution itself and that the constitution had helped facilitate his authoritarian rule. Less than two weeks after the referendum, the Supreme Council of the Armed Forces announced a Constitutional Declaration of sixty-three articles which effectively superseded the 1971 Constitution. The Constitutional Declaration laid out the constitutional framework that would govern Egypt until a new constitution was declared. Kristen Stilt, “The End of ‘One Hand’: The Egyptian Constitutional Declaration and the Rift between the ‘People’ and the Supreme Council of Armed Forces,” *Yearbook of Islamic and Middle Eastern Law* 16 (2010–11): 46–48.
51. Stilt, “End of ‘One Hand,’” 46.
52. Amina Shafiq, “We Need the Constitution First,” *Al-Ahram Weekly*, no. 1055, July 7–13, 2011.
53. Shafiq, “We Need the Constitution First.”
54. Maged Amani, “Whose Principles?,” *Al-Ahram Weekly*, no. 1061, August 18–24, 2011.
55. Amani, “Whose Principles?”
56. “Musawwada ‘ilan al-mabadi’ al-asasiyya li-dustur al-dawla al-misriyya al-haditha” [Draft of the declaration of fundamental principles for the constitution of the modern Egyptian state], November 1, 2011.
57. “Musawwada ‘ilan al-mabadi’ al-asasiyya.”
58. “Musawwada ‘ilan al-mabadi’ al-asasiyya.”
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*Perspectives*, ed. Sargon George Donabed and Autumn Quezada-Grant (Lanham, MD: Lexington Books, 2015), 223.

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61. Sultany, *Law and Revolution*, 313.
62. "Egypt: New Constitution Mixed on Support of Rights," Human Rights Watch, November 30, 2012.
63. Saad and El Fegiery, "Citizenship in Post-Awakening Egypt," 5–6.
64. Layish, "Islamic Law in the Modern World," 298.
65. Yasser El-Shimy, "The Muslim Brotherhood," in Hokayem, *Egypt after the Spring*, 76.
66. "Hilary Clinton Email Archive" (WikiLeaks, 2012), Doc no. C05796154, November 26, 2012.
67. "Hilary Clinton Email Archive" (WikiLeaks, 2012), Doc no. C05796437, November 28, 2012.
68. The Coptic intellectual Samir Marcos also resigned his post as assistant to the president. Rowe, "Church-State Relations in the 'New Egypt,'" 224–25.
69. "Egypt Churches Withdraw from Morsi's National Dialogue," *ahramonline*, January 24, 2013.
70. El-Shimy, "Muslim Brotherhood," 90.
71. Patrick Kingsley, "How Mohamed Morsi, Egypt's First Elected President, Ended Up on Death Row," *Guardian*, June 1, 2015.
72. Sarah Childress, "The Deep State: How Egypt's Shadow State Won Out," *PBS*, September 17, 2013.
73. Kingsley, "How Mohamed Morsi."
74. El-Shimy, "Muslim Brotherhood," 91.
75. Brown, "Transition," 22–23.
76. Sultany, *Law and Revolution*, xxvii.
77. Al-Ali, "New Egyptian Constitution."
78. Masooda Bano, "At the Tipping Point? Al-Azhar's Growing Crisis of Moral Authority," *International Journal of Middle East Studies* 50, no. 4 (2018): 722, 715.
79. Fathiyya al-Dukhakhni, "Al-Ri'asa: Lajnat al-50 satadim murashshahin islamiyyin wa wahidan li-l-jaysh wa 3 li-l-kanisa wa 3 li-l-Azhar" [The leadership: The committee of 50 will include Islamist candidates, one for the army, 3 for the church and 3 for al-Azhar], *al-Masri al-yawm*, August 7, 2013.
80. Sultany, *Law and Revolution*, 251.
81. Zeinab Abul-Magd, "The Military," in Hokayem, *Egypt after the Spring*, 65–66.
82. Brown, "Transition," 28.
83. *Dustur jumhuriyat misr al-'arabiyya li-sanat 1971*.
84. Sayyid Qutb, *Fi zilal al-Qur'an* [In the shade of the Qur'an] (Beirut: dar al-shuruq, 2001), 2:828–29.
85. Qutb, *Fi zilal al-Qur'an*, 1:562.
86. Sayyid Qutb, *Hadha al-din* (Kuwait: maktabat al-faysal, 1989), 18–19.
87. Qutb, *Hadha al-din*, 19.
88. Ahmed and Ginsburg, "Constitutional Islamization and Human Rights," 18.
89. Ahmed and Ginsburg, "Constitutional Islamization and Human Rights," 22, 61–63.
90. Brown, "Islam in Egypt's Cacophonous Constitutional Order," 237–38.

91. Adel Omar Sherif, “The Relationship between the Constitution and the Shari‘ah in Egypt,” in Grote and Röder, *Constitutionalism in Islamic Countries*, 126.

92. Sherif, “Relationship between the Constitution and the Shari‘ah in Egypt,” 126.

93. Sherif, “Relationship between the Constitution and the Shari‘ah in Egypt,” 126, 133.

94. Brown, *Rule of Law in the Arab World*, 98n9.

95. Brown, *Rule of Law in the Arab World*, 125–26.

96. Brown, *Constitutions in a Nonconstitutional World*, 148–49.

97. Lombardi, *State Law as Islamic Law*, 183.

98. Tamir Moustafa, *The Struggle for Constitutional Power: Law, Politics and Economic Development in Egypt* (Cambridge: Cambridge University Press, 2007), 107.

99. Adel Omar Sherif, “Commentary: Shari‘a as Rule of Law,” in *Islamic Law and International Human Rights Law*, ed. Anver M. Emon, Mark S. Ellis, and Benjamin Glahn (Oxford: Oxford University Press, 2012), 116.

100. Lombardi, *State Law as Islamic Law*, 141. By the early 1990s, Tamir Moustafa argues, the Supreme Constitutional Court become an important institution and worked to overturn economic policies from the Nasser era, strengthen property rights, curtail executive power, and protect civil society groups. Moustafa, *Struggle for Constitutional Power*, 118, 93, 17.

101. Moustafa, *Struggle for Constitutional Power*, 108–10.

102. Lombardi, *State Law as Islamic Law*, 158.

103. Lombardi, *State Law as Islamic Law*, 5–6. Bruce Rutherford argues that, while the Egyptian judiciary has advocated for liberal reform and liberal constitutionalism, it is “more comfortable with a powerful and invasive state than classical liberals.” Rutherford, *Egypt after Mubarak*, 55.

104. Lombardi, *State Law as Islamic Law*, 179.

105. Lombardi, *State Law as Islamic Law*, 188, 199–200, 205.

106. Nathan J. Brown and Clark B. Lombardi, “Contesting Islamic Constitutionalism after the Arab Spring: Islam in Egypt’s Post-Mubarak Constitutions,” in Grote and Röder, *Constitutionalism, Human Rights and Islam*, 258.

107. Fadel, “Judicial Institutions,” 657, 664.

108. Lombardi, *State Law as Islamic Law*, 49.

109. Sherif, “Commentary: Shari‘a as Rule of Law,” 116–17.

#### 4. The Ulama, Religious Authority, and the State

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2. Muhammad al-Ghazali, *Min huna na‘lam . . . !* [From here we learn] (Cairo: nahdat misr, 2006), 100.

3. al-Ghazali, *Al-Islam wa-l-awda‘ al-iqtisadiyya*, 127.

4. Taqi ad-Din Ibn Taymiyyah, *Ibn Taymiyyah Expounds on Islam: Selected Writings of Shaykh al-Islam Taqi ad-Din Ibn Taymiyyah on Islamic Faith, Life, and Society*, trans. Muhammad Abdul-Haqq Ansari (Riyadh: Imam Muhammad Ibn Saud University, 2000), 509, 516–17.

5. Kuru, *Islam, Authoritarianism, and Underdevelopment*, 4.

6. Daniel Crecelius, “Nonideological Responses of the Egyptian Ulama to Modernization,” in *Scholars, Saints, and Sufis: Muslim Religious Institutions since 1500*, ed. Nikki R. Keddie (Berkeley: University of California Press, 1978), 183.

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8. Tamir Moustafa, “Conflict and Cooperation between the State and Religious Institutions in Contemporary Egypt,” *International Journal of Middle East Studies* 32, no. 1 (2000): 5.

9. Hasan Al-Banna’, *Six Tracts of Hasan Al-Bana’: A Selection from the Majmū’at Rasā’il al-Imām al-Shahīd Hasan al-Bannā’*. (Accra, Ghana: Africaw, 2006), 142.

10. ‘Abd al-Mun’im Abu al-Futuh, interview by author, Cairo, 2008.

11. Fahmi Huwaydi, interview by author, Cairo, 2007.

12. Muhammad Shahat al-Gindi, interview by author, Cairo, 2008.

13. Jonathan P. Berkey, “Madrasas Medieval and Modern: Politics, Education, and the Problem of Muslim Identity,” in Hefner and Zaman, *Schooling Islam*, 55–56; Muhammad Qasim Zaman, *The Ulama in Contemporary Islam: Custodians of Change* (Princeton, NJ: Princeton University Press, 2002), 2.

14. Malika Zeghal, “Religion and Politics in Egypt: The Ulema of Al-Azhar, Radical Islam, and the State (1952–94),” *International Journal of Middle East Studies* 31, no. 3 (1999): 372, 388.

15. Malika Zeghal, “The ‘Recentering’ of Religious Knowledge and Discourse: The Case of al-Azhar in Twentieth-Century Egypt,” in Hefner and Zaman, *Schooling Islam*, 108.

16. Moustafa, “Conflict and Cooperation,” 3.

17. Nathan J. Brown, “Post-Revolutionary Al-Azhar,” in *The Carnegie Papers* (Washington DC: Carnegie Endowment for International Peace, 2011), 7–8.

18. Ibrahim Najm, interview by author, Cairo, 2008; ‘Abd al-Mu’ti al-Bayyumi, interview by author, Cairo, 2008; Ahmed al-Tayyib, interview by author, Cairo, 2008.

19. Brown and Lombardi, “Contesting Islamic Constitutionalism,” 255.

20. The Muslim Brotherhood, “Barnamij al-Hizb” [Party program] (Cairo, 2007): 10–11.

21. Layish, “Islamic Law in the Modern World,” 298.

22. ‘Abd al-Hamid al-Ghazali, interview by author, Cairo, 2008; ‘Issam al-‘Aryan, interview by author, Cairo, 2008.

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29. Assem Hefny, “Religious Authorities and Constitutional Reform: The Case of al-Azhar in Egypt,” in Grote and Röder, *Constitutionalism, Human Rights and Islam*, 102.

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31. Brown, “Post-Revolutionary Al-Azhar,” 13.

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33. “Al-Majlis al-‘ala li-l-quwat al-musallaha.”

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37. Michael Wahid Hanna, “Egypt’s Non-Islamist Parties,” in Hokayem, *Egypt after the Spring*, 107, 113.

38. Faraj, *Min kawalis al-dustur*, 212; Carrie Rosefsky Wickham, *The Muslim Brotherhood: Evolution of an Islamist Movement* (Princeton, NJ: Princeton University Press, 2013), 271.

39. *Dustur jumhuriyyat misr al-‘arabiyya* (2012).

40. David Kirkpatrick, *Into the Hands of the Soldiers: Freedom and Chaos in Egypt and the Middle East* (New York: Penguin, 2018), 181.

41. Fadel, “Judicial Institutions,” 664.

42. *Dustur jumhuriyyat misr al-‘arabiyya* (2012).

43. *Dustur jumhuriyyat misr al-‘arabiyya* (2012).

44. Hasan al-Shafi’i, interview by author, Cairo, 2013.

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46. Wickham, *Muslim Brotherhood*, 271.

47. “Hizb al-hurriya wa-l-‘adala: Hadha al-barnamij” [Freedom and Justice Party: This program], November, 2011.

48. “Hizb al-hurriya wa-l-‘adala.”

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54. “Tusa‘id al-khilafat hawla qanun al-sukuk al-islamiyya fi misr [Disagreement mounts over the law of Islamic sukuk in Egypt], *Akhir al-akhbar*, January 20, 2013.

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57. Maher ‘Abd al-Wahid, “Jibhat al-difa‘ ‘an al-Azhar taltaqi bi-‘al-Tayyib’ al-yawm” [The front for the defense of al-Azhar meets with al-Tayyib today], *al-Yawm al-sabi‘*, January 16, 2013.

58. “Jibhat al-difa‘ ‘an al-Azhar min aswan: Al-jibhat hiyya ihda khatwat inqadh misr” [The front for the defense of al-Azhar in Aswan: The front is one of the steps for saving Egypt], *al-Dustur*, May 17, 2013.

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60. “Sukuk Law in State of Flux until Al-Azhar Review,” *Egypt Independent*, April 4, 2013.

61. Habib, “Al-Azhar wa-l-ikhwan,” 1–12.

62. Habib, “Al-Azhar wa-l-ikhwan,” 8, 11.

63. “Mursi yuqi‘ qanun al-sukuk li-inqadh iqtisad misr al-muta‘athir [Mursi brings about the sukuk law to save the ailing Egyptian economy], *al-‘Arabiyya*, May 9, 2013.

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65. Jayson Casper, “Safwat al-Bayādī: Negotiating Religion in the Constitutional Committee,” *Arab-West Report*, December 27, 2013.

66. *Dustur jumhuriyyat misr al-‘arabiyya* (2014).

67. *Dustur jumhuriyyat misr al-‘arabiyya* (2014).

68. Ahmed al-Tayyib, interview by author, Cairo, 2008.

69. Agrama, *Questioning Secularism*, 35, 131–44.

70. Agrama, *Questioning Secularism*, 144.

71. Agrama, *Questioning Secularism*, 35.

72. Agrama, *Questioning Secularism*, 120.

73. Agrama, *Questioning Secularism*, 142.

74. Hallaq, “Juristic Authority vs. State Power,” 250.

75. al-Ghazali, *Min huna na‘lam . . . !*, 103.

76. Indira Falk Gesink, *Islamic Reform and Conservatism: Al-Azhar and the Evolution of Modern Sunni Islam* (London: I. B. Tauris, 2009), 9.

77. Zubaida, *Law and Power in the Islamic World*, 102. Ibn Taymiyyah accuses many people—by implication, the ulama—of being dominated solely by “din (religion)” and of turning away from the very affairs of the world which help establish that “din.” Ibn Taymiyyah, *Political Shariyah*, 256.

78. While the Fatwa Council is not free from the authority of the state, it is not an institution associated with state power and law in the way that the personal status courts are even though Agrama states that both “are products of modern reforms and both are institutions under the state and “both are based in the Shari‘a.” Agrama, *Questioning Secularism*, 90. One important feature of the Fatwa Council is that the muftis there combined all four schools of law, “not only in the traditional Azhari sense that all four of them were taught alongside and recognized one another, but also to the extent that the *madhāhib* were cooperating and actually giving fatwas and making decisions jointly.” Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā* (Leiden: Brill, 1997), 154. Thus, the Fatwa Council has a stronger connection with the tradition of the four schools of law than the Personal Status Courts do.

79. Kuru, *Islam, Authoritarianism, and Underdevelopment*, 3.

80. Bruce K. Rutherford, “Surviving under Rule by Law: Explaining Ideological Change in Egypt’s Muslim Brotherhood during the Mubarak Era,” in Arjomand and Brown, *Rule of Law, Islam, and Constitutional Politics*, 255.

81. ‘Abd al-Khaliq al-Sharif, interview by author, Cairo, 2013.

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83. Rowe, “Church-State Relations in the ‘New Egypt,’” 5, 11.

84. Habib, “Al-Azhar wa-l-ikhwan,” 5, 11.

85. Habib, “Al-Azhar wa-l-ikhwan,” 11–12.

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88. Muhammad Salim al-‘Awwa, *Azmat al-mu’assasa al-diniyya* (The crisis of the religious establishment] (Cairo: dar al-shuruq, 2003), 8.

89. al-‘Awwa, *Azmat al-mu’assasa al-diniyya*, 22, 29–30.

90. Rutherford, *Egypt after Mubarak*, 112.

91. Muhammad Salim al-‘Awwa, *Al-Haqq fi al-ta’bir* [The right of expression] (Cairo: dar al-shuruq, 1998), 35.

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93. Hasan al-Shafi’i, interview by author, Cairo, 2013.

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95. Hasan al-Shafi’i, interview by author.

96. Muhammad ‘Abd al-Fadil al-Qusi and al-Qasabi Mahmud Zalat, interview by author, Cairo, 2013.

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99. al-Qusi, *Ru’iyya islamiyya*, 151.

100. al-Qusi, *Ru’iyya islamiyya*, 152.

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103. Ahmed al-Tayyib, interview by author, Cairo, 2008.

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105. In the 1930s, the shaykh of al-Azhar, Muhammad al-Zawahiri, lamented the lack of studies that compared all the schools of law, and in 1950 the shaykh of al-Azhar established a committee for the rapprochement between the schools of law. Eccel, *Egypt, Islam and Social Change*, 151, 452, 271, 438.

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108. Ibrahim El-Houdaiby, "The Identity of Al-Azhar and Its Doctrine," *Jadaliyya*, July 29, 2012.
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112. Jackson, "Islamic Secular," 1–38.
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116. Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, NJ: Princeton University Press, 2005), 138.
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120. Gamal 'Abd al-Sattar, interview by author.
121. 'Abd al-Hamid al-Ghazali, interview by author, Cairo, 2008.
122. 'Abd al-Hamid al-Ghazali, interview by author.
123. 'Abd al-Mu'ti al-Bayyumi, interview by author, Cairo, 2008.
124. Ibrahim Najm, interview by author, Cairo, 2008.

## 5. The "Divinely Revealed Religions"

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2. Dustur jumhuriyyat misr al-'arabiyya (2012).
3. Mahmood, *Religious Difference in a Secular Age*, 2.
4. Mahmood, *Religious Difference in a Secular Age*, 1–2, 15.
5. Mahmood, *Religious Difference in a Secular Age*, 4.
6. Mahmood, *Religious Difference in a Secular Age*, 22.
7. Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmis and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), 3.
8. Emon, *Religious Pluralism and Islamic Law*, 7, 18.
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10. Benjamin Braude, "Foundation Myths of the Millet System," in Braude and Lewis, *Christians and Jews*, 1:74.
11. Barkey, *Empire of Difference*, 116.
12. Kemal Karpat, "Millets and Nationality: The Roots of the Incongruity of Nation and State in the Post-Ottoman Era," in Braude and Lewis, *Christians and Jews*, 141–42.
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14. N.J. Pantazopoulos, *Church and Law in the Balkan Peninsula during the Ottoman Rule* (Thessaloniki: Institute for Balkan Studies, 1967), 92:24–25.
15. Barkey, *Empire of Difference*, 151, 137, 141.
16. Lewis, *The Jews of Islam*, 125–27.
17. Avigdor Levy, introduction to Levy, *Jews of the Ottoman Empire*, 106.
18. Avigdor Levy, “Millet Politics: The Appointment of a Chief Rabbi in 1835,” in Levy, *Jews of the Ottoman Empire*, 434.
19. Bruce Masters, *Christians and Jews in the Ottoman Arab World: The Roots of Sectarianism* (Cambridge: Cambridge University Press, 2001), 108.
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27. Aaron W. Hughes, *Abrahamic Religions: On the Uses and Abuses of History* (New York: Oxford University Press, 2012), 3.
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29. “Rescript of Reform—Islahat Fermani” (Istanbul: Boğaziçi University, Atatürk Institute of Modern Turkish History, 1856).
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33. Shaham, “Jews and the Shari‘a Courts in Modern Egypt,” 118.
34. Berkes, *Development of Secularism in Turkey*, 95–96.
35. “Rescript of Reform—Islahat Fermani.”
36. Berkes, *Development of Secularism in Turkey*, 152.
37. Karpat, “Millets and Nationality,” 164.
38. “Rescript of Reform—Islahat Fermani.”
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40. Karpat, “Millets and Nationality,” 163, 144.
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42. George N. Sfeir, “The Abolition of Confessional Jurisdiction in Egypt: The Non-Muslim Courts,” *Middle East Journal* 10, no. 3 (1956): 250n2.
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44. Hourani, *Minorities in the Arab World*, 41.
45. Carter, *Copts in Egyptian Politics*, 231.
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52. Hourani, *Minorities in the Arab World*, 20.
53. Barkey, *Empire of Difference*, 163.
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81. Dustur jumhuriyyat misr al-'arabiyya li-sanat 1971.

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103. Cole, “Rashid Rida and the Baha’i Faith,” 281–82, 289.

104. Pink, “Post-Qur’anic Religion,” 428, 432.

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67. Hulsman and Serôdio, "Interview with Human Rights Lawyer Mona Zulficar."
68. Zeghal, "Competing Ways of Life," 265.
69. Moustafa, *Constituting Religion*, 14.
70. Moustafa, *Constituting Religion*, 14.
71. William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford University Press, 2009).
72. Cavanaugh, *Myth of Religious Violence*, 227.
73. *Dustur jumhuriyyat misr al-'arabiyya* (2012).
74. Youssef Sidhom, "Fixing the Constitution," *Watani*, January 19, 2013.
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77. Sidhom, "Fixing the Constitution."
78. al-'Awwa, *Fi al-nitham al-siyasi*, 136.
79. al-'Awwa, *Fi al-nitham al-siyasi*, 137.
80. al-'Awwa, *Fi al-nitham al-siyasi*, 138.
81. al-'Awwa, *Fi al-nitham al-siyasi*, 139.
82. al-'Awwa, *Fi al-nitham al-siyasi*, 141.
83. al-'Awwa, *Fi al-nitham al-siyasi*, 141.
84. al-'Awwa, *Fi al-nitham al-siyasi*, 141–42.
85. al-Bishri, *Al-Wad' al-qanuni*, 48.
86. *Dustur jumhuriyyat misr al-'arabiyya* (2012).
87. Lombardi, *State Law as Islamic Law*, 53.
88. Lombardi, *State Law as Islamic Law*, 49.
89. Fadel, "Islamic Law Reform," 50.
90. Fadel, "Islamic Law Reform," 79, 81.
91. Cuno, *Modernizing Marriage*, 123–25.
92. Cuno, "Disobedient Wives and Neglectful Husbands," 17–18.
93. "Qanun raqm 1 li-sanat 2000 bi-isdar qanun tanthim ba'd awda' wa jira'at al-taqadi fi masa'il al-ahwal al-shakhsiyya" [Law no. 1 of the year 2000 promulgating the organization of the conventions and procedures for the litigation of matters of personal status], <https://egypt.gov.eg/arabic/laws/personal/introduction.aspx>, accessed June 16, 2020.
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98. Zaman, *Modern Islamic Thought in a Radical Age*, 108.

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101. Muhammad al-Ghazali, *Al-Islam al-muftara 'alayhi bayn al-shuyu'yyin wa-l-ra'smaliyyin* [Islam between its communist and capitalist enemies] (Cairo: nahdat misr, 2006), 109.

102. al-Ghazali, *Al-Islam wa-l-awda' al-iqtisadiyya*, 117.

103. al-Ghazali, *Al-Islam wa-l-awda' al-iqtisadiyya*, 117.

104. Sari Hanafi and Azzam Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning," *Journal of Islamic Ethics* 3, nos. 1–2 (2019): 210, 216–17.

105. Muhammad Kafafi, "Nadwa bil-Sa'id" [A conference in Upper Egypt], *Misr al-'arabiyya*, May 18, 2016.

106. 'Al-Qawmi li-l-mar'a" [The National Council for Women), *al-Bawaba News*, January 10, 2016; Muhammad Sharqawi, "Al-Qawmi li-l-mar'a" (The National Council for Women), *al-Yawm al-sabi'a*, January 2, 2018.

107. Rutherford, *Egypt after Mubarak*, 57–58, 190–93.

## 7. Judicial Autonomy and Inheritance

1. Youssef Sidhom, "Eating Up a Woman's Inheritance," *Watani*, December 15, 2011.

2. Paul S. Rowe, "Neo-Millet Systems and Transnational Religious Movements: The Humayun Decrees and Church Construction in Egypt," *Journal of Church and State* 49, no. 2 (2007): 331; Fiona McCallum, "The Coptic Orthodox Church," in *Eastern Christianity and Politics in the Twentieth Century*, ed. Lucian N. Leustean (London, New York: Routledge, 2014), 521–541.

3. Lewis, *Jews of Islam*, 105–6.

4. Aryeh Shmuelevitz, *The Jews of the Ottoman Empire in the Late Fifteenth and the Sixteenth Centuries: Administrative, Economic, Legal and Social Relations as Reflected in the Responsa* (Leiden: Brill, 1984), 15–16.

5. Amnon Cohen, *Jewish Life under Islam: Jerusalem in the Sixteenth Century* (Cambridge, MA: Harvard University Press, 1984), 110.

6. Joseph R. Hacker, "Jewish Autonomy in the Ottoman Empire: Its Scope and Limits; Jewish Courts from the Sixteenth to the Eighteenth Centuries," in Levy, *Jews of the Ottoman Empire*, 160–73, 165–66.

7. Najwa al-Qattan, "Dhimmi in the Muslim Court: Documenting Justice in Ottoman Damascus, 1775–1860" (PhD diss., Harvard University, 1996), 150, 154–55, 163, 204, 347–48. Jennings also suggests that the frequency of *dhimmi* cases in the sharia courts in Kaysera, Central Anatolia, suggests that "they had no internal judicial apparatus of their own, or at least a very weak one." Ronald C. Jennings, "Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri," *Journal of the Economic and Social History of the Orient* 21, no. 3 (1978): 271. It is not impossible, he argues, that Kayseri *dhimmi* "generally followed Islamic law in family matters, or that their traditional family law closely resembled that of the Muslims" (274).

8. Cohen, *Jewish Life under Islam*, 110, 126–27.
9. Shaham, “Jews and the Shari‘a Courts in Modern Egypt,” 113.
10. Pantazopoulos, *Church and Law in the Balkan Peninsula*, 92:24, 54.
11. M. A. Ubcini, *Letters on Turkey: An Account of the Religious, Political, Social, and Commercial Condition of the Ottoman Empire*, trans. Lady Easthope (New York: Arno Press, 1973), 2:36.
  12. Pantazopoulos, *Church and Law in the Balkan Peninsula*, 54, 93–99.
  13. Antoine Fattal, *Le statut légal des non-musulmans en pays d’Islam* (Beirut: Imprimerie Catholique, 1958), 353–55.
  14. Tamer el-Leithy, “Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D.” (PhD diss., Princeton University, 2005), 418.
  15. Guirguis and van Doorn-Harder, *Emergence of the Modern Coptic Papacy*, 19.
  16. Al-Qattan, “Dhimmi in the Muslim Court,” 347; E. W. Lane, *Manners and Customs of the Modern Egyptians* (New York: Cosimo, 2005), 130–31.
  17. Shmuelevitz, *Jews of the Ottoman Empire*, 43–44. Nevertheless, non-Muslim communities tried to stop their members from having recourse to the sharia courts. Shmuelevitz, *Jews of the Ottoman Empire*, 67. The Coptic pope Gabriel VII (1525–68) opposed Copts practicing polygamy by ordering the community to shun offenders. Guirguis and van Doorn-Harder, *Emergence of the Modern Coptic Papacy*, 19.
  18. Richard Clogg, “The Greek Millet in the Ottoman Empire,” in Braude and Lewis, *Christians and Jews*, 1:186–87.
  19. Pantazopoulos, *Church and Law in the Balkan Peninsula*, 6, 19, 43–45, 56–57; Clogg, “Greek Millet,” 186–87.
  20. Hacker, “Jewish Autonomy in the Ottoman Empire,” 183.
  21. Ubcini, *Letters on Turkey*, 319.
  22. Hacker, “Jewish Autonomy in the Ottoman Empire,” 176–77.
  23. Initially, the reform made this jurisdiction concurrent in Article 17 of the Khatti Humayun Decree of 1856. However, this shift from exclusive to concurrent jurisdiction encountered heated opposition from the heads of the religious minorities. As a result, the Ottoman authorities retreated and issued several decrees which restored to non-Muslim courts exclusive jurisdiction in most personal status affairs, including marriage, maintenance, divorce, and testate succession. Shaham, “Jews and the Shari‘a Courts in Modern Egypt,” 118–19. This exclusive jurisdiction was formalized in the two *hautes circulaires* issued by the Sublime Porte in 1891 which rendered the jurisdiction of the Greek Orthodox and Armenian patriarchs compulsory and exclusive. Sfeir, “Abolition of Confessional Jurisdiction in Egypt,” 249–50.
  24. Magdi Guirguis, *Al-Qada’ al-qibti fi misr: Dirasa ta’rikhiyya* [The Coptic judge in Egypt: A historical study] (Cairo: mirit, 1999), 58.
  25. Carter, *Copts in Egyptian Politics*, 231.
  26. Ron Shaham, “Shopping for Legal Forums: Christians and Family Law in Modern Egypt,” in *Dispensing Justice in Islam: Qadis and Their Judgments*, ed. Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (Leiden: Brill, 2005), 454.
  27. Berkes, *Development of Secularism in Turkey*, 170.
  28. Shaham, “Jews and the Shari‘a Courts in Modern Egypt,” 131–32.
  29. John L. Esposito, *Women in Muslim Family Law* (Syracuse, NY: Syracuse University Press, 1982), 41.

30. Judith E. Tucker, *Women, Family, and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), 138.

31. These included endogamy, religious endowments, gifts, and debts as a way of directing wealth to favored heirs. When heirs were counted among the deceased's creditors, these debts had to be paid out of the estate before the distribution of the estate. Pascale Ghazaleh, "Heirs and Debtors: Blood Relatives, Qur'anic Heirs, and Business Associates in Cairo, 1800–50," in Hanna and Abbas, *Society and Economy in Egypt and the Eastern Mediterranean*, 146–52.

32. Fattal, *Le statut légal des non-musulmans en pays d'Islam*, 358, 140.

33. Fattal, *Le statut légal des non-musulmans en pays d'Islam*, 140–41.

34. Ottomans also confiscated inheritance of government employees when there was misuse of office, Fatma Müge Göçek, "Toward a Theory of Westernization and Social Change: Eighteenth and Nineteenth Century Ottoman Society" (PhD diss., Princeton University, 1988), 208n23.

35. Shmuelevitz, *Jews of the Ottoman Empire*, 77.

36. Cohen, *Jewish Life under Islam*, 62.

37. Cohen, *Jewish Life under Islam*, 133.

38. Shaham, "Jews and the Shari'a Courts in Modern Egypt," 117. Cohen argues that, while Jews in Jerusalem accepted the sharia laws for intestacy, circumventing the application of the sharia was contingent on a will. Cohen, *Jewish Life under Islam*, 133.

39. Shmuelevitz, *Jews of the Ottoman Empire*, 66.

40. However, according to Goitein, the situation was more egalitarian for Jews in Cairo between the tenth and the thirteenth centuries. Daughters receiving equal shares with sons was also common. S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, vol. 3, *The Family* (Berkeley: University of California Press, 1978), 281, 287.

41. al-Qattan, "Dhimmi in the Muslim Court," 185.

42. Pantazopoulos, *Church and Law in the Balkan Peninsula*, 45, 56, 91–92.

43. Fathi Ragheb Hanna, "Ahkam wa qawa'id al-mawarith wa-l-wasiya wafqan li-ahkam al-shari'a al-misihhiyya wa ahkam al-shari'a al-islamiyya" [Rules and regulations of inheritance and testamentary disposition according to the rules of the Christian sharia and the Islamic sharia] (Bishop of Central Cairo Churches, 2015), 3; Youssef Sidhom, "Needed: Inheritance Law for Christians," *Watani*, February 7, 2015.

44. M. Berger, "Public Policy and Islamic Law," 95n24–25.

45. Goitein, *Mediterranean Society*, 3:280.

46. Goitein, *Mediterranean Society*, 3:277–78, 280–81.

47. Goitein, *Mediterranean Society*, 3:286.

48. Khalil Samir, "Al-Ṣafī Ibn Al-ʿAssāl," in *The Coptic Encyclopedia*, ed. Aziz S. Atiya (New York: Macmillan, 1991), 2076.

49. Peter L. Strauss, ed., *The Fetha Nagast: The Law of Kings*, trans. Abba Paulos Tzadua (Durham, NC: Carolina Academic Press 2009), 236–39. In Ethiopia, it is called the *Fetha Nagast*. The *Fetha Nagast* is a translation of al-ʿAssāl's nomocanon via Ge'ez Ethiopian Manuscripts.

50. Strauss, *Fetha Nagast*, 237.

51. El-Leithy, "Coptic Culture and Conversion in Medieval Cairo," 95–96.

52. El-Leithy, "Coptic Culture and Conversion in Medieval Cairo," 456. Youssef Sidhom, in a personal interview in 2007, stated that there is only evidence as far back

as the fourteenth and fifteenth centuries that the church dealt directly with inheritance. He states that Copts used Islamic inheritance law because they had not come up with an alternative, although it is more likely that Coptic inheritance law became increasingly influenced by Islamic inheritance law. Youssef Sidhom, interview by author, Cairo, 2007.

53. Guirguis and van Doorn-Harder, *Emergence of the Modern Coptic Papacy*, 8.
54. Guirguis and van Doorn-Harder, *Emergence of the Modern Coptic Papacy*, 8–9.
55. Carter, *Copts in Egyptian Politics*, 253.
56. Marcos and Fouad, “Our Experience Dialogue Based on Citizenship,” 177.
57. F. Hanna, “Ahkam wa qawa'id al-mawarith,” 3.
58. Sfeir, “Abolition of Confessional Jurisdiction in Egypt,” 250.
59. Maurits S. Berger, “Secularizing Interreligious Law in Egypt,” *Islamic Law and Society* 12, no. 3 (2005): 401.
60. Shaham, “Jews and the Shari'a Courts in Modern Egypt,” 118–19.
61. Sfeir, “Abolition of Confessional Jurisdiction in Egypt,” 250. Sfeir's list mentions succession and wills but does not distinguish between testate and intestate succession; Shaham gives more details and makes it clear that the two were split with intestate succession being made a matter of concurrent jurisdiction. Shaham, “Jews and the Shari'a Courts in Modern Egypt,” 119.
62. Shaham, “Jews and the Shari'a Courts in Modern Egypt,” 118–19.
63. M. Berger, “Secularizing Interreligious Law in Egypt,” 404.
64. Richard A. Debs, *Islamic Law and Civil Code: The Law of Property in Egypt* (New York: Columbia University Press, 2010), 90.
65. Nasir, *Islamic Law of Personal Status*, 35.
66. Carter, *Copts in Egyptian Politics*, 253.
67. Shaham, “Jews and the Shari'a Courts in Modern Egypt,” 120.
68. Shaham, “Jews and the Shari'a Courts in Modern Egypt,” 120–21.
69. This is even though in a 2000 ruling, the Supreme Constitutional Court stated that the 1938 bylaws were binding legal rules that were subject to constitutional control by the Supreme Constitutional Court. Supreme Constitutional Court, June 3, 2000, No. 151, Year 50.
70. “Nusus la'ihat al-ahwal al-shakhsiyya al-sadira 'an al-majlis al-milli al-'amm li-l-aqbat al-urthuduks” [The texts of the bylaws of the personal status law issued by the Coptic Orthodox Communal Council], in *Talaq al-aqbat* [Divorce of the Copts], by Karima Kamal (Cairo: dar al-mirit, 2006), 207–62.
71. Karima Kamal, *Talaq al-aqbat* [Divorce of the Copts] (Cairo: dar al-mirit, 2006), 165.
72. Court of Cassation, January 17, 1979, No. 26/16, Year 48.
73. Court of Cassation, June 19, 1963, No 40, Year 29.
74. Court of Cassation, May 27, 1964, No 17, Year 32.
75. M. Berger, “Public Policy and Islamic Law,” 94–95.
76. M. Berger, “Secularizing Interreligious Law in Egypt,” 406, 411, 413.
77. M. Berger, “Public Policy and Islamic Law,” 119.
78. Court of Cassation, January 17, 1979, No. 26/16/, Year 48.
79. *Dustur misr li-sanat 1923*.
80. Court of Cassation, January 17, 1979, No. 26/16, Year 48.
81. Court of Cassation, January 17, 1979, No. 26/16, Year 48.

82. Court of Cassation, January 17, 1979, No. 26/16, Year 48.
83. M. Berger, "Public Policy and Islamic Law," 126, 129–30.
84. M. Berger, "Public Policy and Islamic Law," 128.
85. R. M. Scott, "Islamic Law, State Law, and Communal Autonomy."
86. "Qanun raqm 1 li-sanat 2000."
87. Jackson, *Islamic Law and the State*, 72.
88. Cornelius Hulsman, interview by author, Cairo, 2007.
89. Vivian Fu'ad, interview by author, Cairo, 2007.
90. Sidhom, "Needed: Inheritance Law for Christians."
91. There are similarities between this and Judith Tucker's description of the nineteenth century, where, she argues, Egyptian women were prevented from inheriting land. Judith E. Tucker, *Women in Nineteenth-Century Egypt* (Cambridge: Cambridge University Press, 1985), 47–49.
92. Youssef Sidhom, "Inheritance as Seen in the Bible," *Watani*, April 10, 2016.
93. Youssef Sidhom, interview by author, Cairo, 2007; Munir Fakhri 'Abd al-Nur, interview by author, Cairo, 2007.
94. Youssef Sidhom, "Towards Gender Equality in Inheritance: Tunisia Leads, Coptic Church Stands Still," *Watani*, September 17, 2017.
95. Sidhom, "Needed: Inheritance Law for Christians."
96. Marilyn 'Abd al-Malik, "Mirath al-aqbat: Al-dai' bayn al-shari'a wa-l-qanun" [The inheritance of Copts: Getting lost between the sharia and law], *al-Bawaba*, May 1, 2017.
97. 'Abd al-Malik, "Mirath al-aqbat."
98. F. Hanna, "Ahkam wa qawa'id al-mawarith," 4–5.
99. Najib Ghibrial, interview by author, Cairo, 2007.
100. Fadi Habashi, "Christians Claim Equality between Men and Women concerning Inheritance," *Arab-West Report (al-Fajr)*, April 10, 2006.
101. 'Abd al-Malik, "Mirath al-aqbat."
102. Youssef Sidhom, "Inheritance Rules Revisited," *Watani*, March 27, 2016.
103. F. Hanna, "Ahkam wa qawa'id al-mawarith," 1.
104. Bishop Thomas, interview by author, Anafora, 2007.
105. 'Abd al-Malik, "Mirath al-aqbat."
106. Bishop Thomas, interview by author, Anafora, 2007.
107. 'Abd al-Malik, "Mirath al-aqbat."
108. 'Abd al-Malik, "Mirath al-aqbat."
109. Guirguis Safwat, "Masadir kanisiyya: Hala jadaliyya jadida bi-sha'n qanun al-ahwal al-shakhsiyya" [Church sources: A new dispute over the question of personal status law], *al-Dustur*, July 23, 2018; Peter Majdi and Marina Milad, "Interview with the head of the Coptic Evangelical Church," *al-Tahrir*, May 21, 2016.
110. Guirguis Safwat, "Ba'd tawaqquf 6 ashhur . . . tafasil 'awdat harakat milaff al-ahwal al-shakhsiyya" [After a pause of six months . . . details on the return of the enterprise "the personal status file"], *al-Dustur*, June 19, 2018.
111. "Al-Nass al-kamil li-mashru' qanun al-ahwal al-shakhsiyya li-l-aqbat 2016 wa-la'iha al-dakhiliyya li-l-majlis al-iklirki" [The complete text of the 2016 draft of the personal status law for Copts and the internal bylaws for the Clerical Council], ed. Faith Protectors Association-Rabitat Hamlat al-'Iman (Cairo, 2016), <http://protectors-faith.com/?p=4532>.

112. Youssef Sidhom, “Kudos for Tunisia,” *Watani*, July 3, 2016.
113. Vivian Fu‘ad, interview by author, Cairo, 2007; Youssef Sidhom, interview by author, Cairo, 2007.
114. Sidhom, “Inheritance Rules Revisited”; Munir Fakhri ‘Abd al-Nur, interview by author, Cairo, 2007.
115. Sidhom, “Inheritance as Seen in the Bible.”
116. Bishop Thomas, interview by author, Anafora, 2007.
117. Sidhom, “Inheritance Rules Revisited.”
118. K. Kamal, *Talaq al-aqbat*, 108; Karima Kamal, *Al-Ahwal al-shakhsiyya li-l-aqbat* [Coptic personal status law] (Cairo: dar nahdat misr, 2012), 8–9.
119. “Egyptian Woman Fights Unequal Islamic Inheritance Law,” *al-Jazeera*, November 15, 2019.
120. ‘Abd al-Malik, “Mirath al-aqbat.”
121. ‘Abd al-Malik, “Mirath al-aqbat.”
122. Youssef Sidhom, “Secure Coptic Woman’s Fair Share of Inheritance,” *Coptic Solidarity*, January 15, 2017.
123. ‘Abd al-Malik, “Mirath al-aqbat.”
124. “Nusus la’ihat al-ahwal al-shakhsiyya al-sadira.”
125. ‘Abd al-Malik, “Mirath al-Aqbat.”
126. “Nusus la’ihat al-ahwal al-shakhsiyya al-sadira.”
127. Youssef Sidhom, “Court Ruling: Equal Inheritance for Men and Women,” *Watani*, June 2, 2019.
128. “Mashru‘ qanun al-ahwal al-shakhsiyya al-mawahhid li-‘amm 2018,” in Mikha’il, *Al-Qada’ al-milli*, 323–44.
129. “Egyptian Woman Fights Unequal Islamic Inheritance Law.”
130. In the United States, when statutes and constitutional principles, such as the First Amendment (1791) to the Bill of Rights and the Religious Freedom Restoration Act of 1993, give special treatment to a religious action or organization, courts must be able to say what is religious. Winnifred Fallers Sullivan argues that, when the law has to make decisions about religion, lines must be drawn between what is religious and what is not. Addressing this is fraught with problems. Sullivan argues that the free exercise and disestablishment clauses overpromise what they cannot deliver, Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton, NJ: Princeton University Press, 2005), 148.
131. Court of Cassation, May 10, 1972, No. 18 Year 39.
132. Bishop Marqus, interview by author, Cairo, 2007.
133. ‘Abd al-Malik, “Mirath al-aqbat.”
134. ‘Abd al-Malik, “Mirath al-aqbat.”
135. ‘Abd al-Malik, “Mirath al-aqbat.”
136. Sidhom, “Inheritance as Seen in the Bible.”
137. Sidhom, “Eating Up a Woman’s Inheritance”; Sidhom, “Towards Gender Equality in Inheritance: Tunisia Leads, Coptic Church Stands Still.”
138. Youssef Sidhom, “Constitution and Law Secure: Coptic Woman’s Fair Share of Inheritance,” *Watani*, January 15, 2017.
139. Youssef Sidhom, “Inheritance in Family Law for Christians,” *Watani*, November 13, 2016.
140. ‘Abd al-Malik, “Mirath al-aqbat.”

141. Youssef Sidhom, “A Woman’s Inheritance,” *Watani*, July 25, 2010.
142. Sidhom, “A Woman’s Inheritance.”
143. Samir Marcos, interview by author, Cairo, 2007.
144. Munir Fakhri ‘Abd Al-Nur, interview by author, Cairo, 2007.
145. Mustafa Rahuma, “‘Al-Haqq fi al-hayat’: Mashru‘ qanun al-injiliyyin li-l-ahwal al-shakhsiyya mukhalif li-l-dustur” [The right to life: The plan of the evangelicals for the law of personal state violates the constitution], *al-Watan*, January 21, 2017.
146. Yusam Ramadan, “‘Al-Baz: Ma al-mani‘ ‘an yakun li-dunya qanun yusawi bayn al-rajl wa-l-mar’a fi al-mirath?” [Al-Baz: What is preventing us from having a law that makes men and women equal in inheritance?], *al-Masri al-yawm*, August 13, 2018.
147. Mahmood ‘Abd al-Hamid, “Intifada parlamaniyya did da‘wat al-musawa fi al-mirath” [A parliamentary intifada against calls for equality in inheritance], *Ahl misr*, October 19, 2018.

### Conclusion

1. Muhammad Bakr Iman al-Sanhuri, “‘Hamrush’: Mashru‘a qanun li-thahirat al-ilhad” [Hamrush: A proposal for a bill for the phenomenon of atheism], *al-Bawaba*, December 24, 2017.
2. Hanan Tawfiq, “Hayat kibar al-‘ulama’: Al-Islam yu‘ti al-haqq li-l-hakim fi i‘dam al-mulhid” [The Senior Scholars’ Council: Islam gives the ruler the right to execute apostates], *Sada al-balad*, January 28, 2018.
3. Mohamed S. El-Awa (Muhammad Salim al-‘Awwa), *Punishment in Islamic Law* (Indianapolis: American Trust, 1982), 50–51.