

Chapter Eight

Women's Rights and Equality: Egyptian Constitutional Law

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Abstract This chapter charts the genealogy of the language of “women’s equality” in successive Egyptian constitutions, culminating in the 2012 constitution in which the liberal language of women’s rights and equality converged with Islamist political aims. In the aftermath of the 2011 revolution, the new Egypt converted the fervor of revolutionary change into the civil liberties of a new constitutionalism. This partly involved the re-institution, or re-constitution, of the existing power structure, even with the guarantee of new liberties for women. This sexual contract is the counterpart of citizenship’s social contract in a liberal secular order. Its origins lie in secular state politics (both colonial and post-colonial) that depend heavily on religion for its legitimization, religion that is said to reside in the family, in women’s bodies, in the sexual contract, and in the inviolability of private property.

Introduction

“Woman and the constitution: fear of woman’s marginalization rules over all,” blared an April 2012 headline in *al-Abram*, joining the protests over women’s rights in the 2012 constitution.¹ Web based news outlets like “EgyptSoft” sprang up protesting the constitution, accompanied by blog posts about how “the Egyptian woman screams in the face of the constitution of discrimination.”² Fear reigned about how the government of Muhammad Morsi would approach the question of women’s rights and equality, with many feminist organizations striking a defensive posture. In December 2012,

¹Abd al-Rahman al-Shaykh, Muhammad Mustafa, and Nabil Badr, “al-Marʿa wa-l-Dustur: al-Khawf Yusaytir ‘ala al-Jami‘min Tahmish Dawr al-Mar’a,” *al-Abram*, April 10, 2012.

²“Sarkha al-Marʿa al-Misriyya fi Wajh ‘Dustur al-Fitna wa-l-Tamayiz,” EgyptSoft, *al-Marʿa wa-l-Dustur*, accessed March 21, 2014, <http://www.egyptsoft.org/new/>.

the post-revolutionary Morsi government pushed through a new constitution, despite protests all around.

Criticisms of the 2012 Egyptian constitution revolved around its presumed violations of women's rights. Media reports in the USA blamed the Islamism of the Morsi government for jeopardizing women's "personal liberty" and civil rights. Reports by *Time*, National Public Radio (NPR), Amnesty International, Human Rights Watch, the Wilson Center, and the United Nations posed women's rights against the "Islamism" of the new Egyptian government and its constitution.³ These reports stressed the dangers that an Islamic government, and "conservative Islam" in general, would pose to women's rights. Mainstream news outlets like *USA Today* and CBS News jumped to far-fetched conclusions about the implications for women's rights, claiming that the new constitution allowed fathers to marry off their daughters at the age of nine and that the new constitution told women what to wear. "And some," according to an article in *USA Today*, "are organizing to protect their rights."⁴ For the most part, this criticism focused on how the 2012 constitution denied women equality. CBS News, for example, reported that "women's equality is absent from Egyptian constitution ... the work of religiously conservative supporters of President Muhammad Morsi ... and his Islamist allies."⁵

Yet the 2012 constitution was the first to explicitly establish—without qualification—"equality and equal opportunities for all citizens, men and women [*muwatinin wa muwatinat*], without distinction, favoritism, or partiality, in rights or duties."⁶ The preamble asserted this equality as one of the founding principles of the new state, going to great lengths to pay tribute to democratic concepts like popular sovereignty, political pluralism, dignity, and freedom (of thought, expression, creativity, etc.). Gender equality was an

³Vivienne Walt, "Women's Rights at Odds in Egypt's Constitution Wars," *Time*, December 9, 2012; Merrit Kennedy, "Egyptian Women Worry Constitution Limits Rights," *NPR*, October 12, 2012; *Egypt's New Constitution Limits Fundamental Freedoms and Ignores the Rights of Women* (Amnesty International, November 30, 2012), <http://www.amnesty.org/en/news/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women-2012-11-30>; *Egypt: New Constitution Mixed on Support of Rights* (Human Rights Watch, November 30, 2012); Moushira Khattab, *Women's Rights Under Egypt's Constitutional Disarray* (Woodrow Wilson Center for International Scholars, January 17, 2013); United Nations News Service, *UN Experts Urge Review of Egypt's Draft Constitution to Ensure Equality and Women's Rights*, UN News Centre, December 14, 2012, <http://www.un.org/apps/news/story.asp?NewsID=43771>.

⁴Alami, "Egypt Constitution Will Be Bad News for Women, Activists Say," *USA Today*, January 13, 2013.

⁵Holly Williams, "Women's Equality Absent from Egyptian Constitution," *CBS Evening News*, November 30, 2012.

⁶Jumhuriyyat Misr, "al-Dustur," December 26, 2012.

integral element of this liberal vision of the new state, asserted in the preamble's fifth principle. Moreover, the equality of all citizens was reiterated as a general principle no fewer than five times in the main body of the 2012 constitution (in Articles 6, 8, 9, 33, and 63). Of course, whether social or political equality can be achieved by constitutional decrees or amendments is up for debate—and it is not a question that I can answer here. It was clear that equality in general, and gender equality in particular, had an important role in the 2012 constitution. In contrast, the US constitution has no mention of equality anywhere between anyone. Women did not gain equal protection under the law until the 1971 Supreme Court decision in *Reed v. Reed*. And despite (nearly constant) calls for an Equal Rights Amendment since 1923, such an amendment has never passed.

The 2012 constitution paved the way to a more extended assertion of equality in the subsequent 2014 constitution, which called (in Article 11) for appointing women to high political office, including the judiciary, “without discrimination,” as well as calling for equal representation of women in parliament. The 2012 constitution raised the bar on women's equality in Egyptian constitutional history, so that the 2014 “secular” constitution was compelled to top the 2012 “Islamist” one with further provisions for women's rights. The language of gender equality in the 2014 constitution was almost identical to that of the 2012 constitution, calling for equality in rights and duties without any discrimination. The preamble of the 2014 constitution closes with echoes of the 2012 constitution, of its *muwatinin* and *muwatinat*. In the end, Islamic realpolitik with regard to women's rights and equality belied dark—and erroneous—assumptions about Islamist intentions.

The 2012 constitution's attitude toward women did not represent a radical departure from prior “secular” constitutions. On the contrary, the government of Muhammad Morsi adapted the liberal language of women's rights, drawing simultaneously on a long history of constitutional language as well as a long history of Islamist rhetoric about women's rights in Islam. This Islamist language has long been deployed in the service of Islamic mobilization, advocacy that has been essential to cultivating a broad appeal among the populace.⁷

This chapter charts the genealogy of the language of “women's equality” in successive Egyptian constitutions, culminating in the 2012 constitution in which the liberal language of women's rights and equality converged with Islamist political aims. In the aftermath of the 2011 revolution, the new Egypt converted the fervor of revolutionary change into the civil liberties of a new constitutionalism. This is what Hannah Arendt calls the “end of revolution”

⁷Mona El-Ghobashy, “The Metamorphosis of the Egyptian Muslim Brothers,” *International Journal of Middle East Studies* 37, no. 03 (2005): 373–95.

in her classic book, *On Revolution*, where constitutions spell the end of revolutionary freedoms, replacing them with "civil liberties."⁸ "The content of the Constitution," she remarks, "was by no means the safeguard of civil liberties but the establishment of an entirely new system of power."⁹ In the case of the Arab Spring, this partly involved the reinstatement, or reconstitution, of the existing power structure, even with the guarantee of new liberties for women. Post-revolution constitution making reestablishes and re-entrenches what Arendt calls a *constitutio libertatis* of the *novus ordo saeculorum*, a secular liberal order that needs the grounding and legitimating "sanction of religion ever more urgently."¹⁰ Feminists and activists critique these new constitutions' valorizations of complementarity and the family.¹¹ But as feminist thinkers like Mervat Hatem, Wendy Brown, Carole Pateman, and Joan Scott observe, this sexual contract is the counterpart of citizenship's social contract in a liberal secular order.¹² And its origins lie in a secular state politics (both colonial and post-colonial) that depends heavily on religion for its legitimization, religion that is said to reside in the family, in women's bodies, in the sexual contract, and in the inviolability of private property.¹³

Outcry over the 2012 constitution had a different tenor inside Egypt, directed less at its presumed Islamism than at the constitution's autocratizing elements. Most of these critiques were guided by a belief that the Muhammad Morsi government and the Muslim Brotherhood were engineering political institutions and state policy in ways that would preserve the authoritarian character of the Egyptian state, albeit concealed under a façade of democracy. Fears revolved around the use of democratic language as a fig leaf to cover the apparatus of an authoritarian "deep state," one whose structure and institutions might have been intractable or even useful to the Muslim Brotherhood. The use of democratic rhetoric to disguise other, less democratic, aims is a tactic familiar to the region, whether in its imperial, authoritarian, or neo-liberal garb.

⁸Hannah Arendt, *On Revolution* (New York: Penguin): 133–35.

⁹Ibid., 147.

¹⁰Ibid., 161.

¹¹Frances Hasso, "Alternative Worlds at the 2013 World Social Forum in Tunis," *Jadaliyya*, May 1, 2013, <http://www.jadaliyya.com/pages/index/11396/alternative-worlds-at-the-2013-world-social-forum>.

¹²Carole Pateman, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988); Mervat Hatem, "Egyptian Discourses on Gender and Political Liberalization: Do Secularist and Islamist Views Really Differ?," *Middle East Journal* 48, no. 4 (1994): 661–76; Wendy Brown, "Liberalism's Family Values," in *States of Injury: Power and Freedom in Late Modernity* (Princeton, NJ: Princeton University Press, 1995); Joan Wallach Scott, *Only Paradoxes to Offer: French Feminists and the Rights of Man* (Cambridge, MA: Harvard University Press, 1997).

¹³Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA: Stanford University Press, 2003).

Gender Equality: Public Rights and Private Duties

Gender equality first appears in the 1956 constitution promulgated under Gamal Abd al-Nasser: “All Egyptians are **equal** under the law in **public** rights and duties, without discrimination due to **sex**, origin, language, religion, or belief” (Article 31).¹⁴ In contrast, the 1923 constitution (Article 3) called for equality for all Egyptians, without discrimination with respect to *origin, language, or religion* without mentioning sex. In addition to gender equality, the 1956 constitution also introduced the tension between a woman’s public work and her duties to the family, asserting that “the state facilitates for women the agreement [*al-tawfiq*] between her work in society and her duties to the family” (Article 19). As in the United States constitution, the tension between women’s “public work” and her “duties to the family” has been at the core of contestations around—and liberal assertions of—women’s legal equality with men. The emphasis on safeguarding the family is one of the nostalgic aftereffects of the ruthless individualism of liberal citizenship, where duties, obligations, responsibilities, care, community, and communitarism are projected onto, and circumscribed within, a feminized realm of intimate relations, characterized in naturalistic and biological terms.

The dualism between public rights and private duties is what some, like Joan Scott, Carole Pateman, and Mervat Hatem, have critiqued as the gendered “paradox” inherent in liberal ideology. It is a sexual contract that mirrors the social, with duties shoring up rights, family shoring up the individual, religion shoring up the state, difference shoring up equality, and so forth. Yet these contradictions are also how secular liberalism produces its own (seeming) conceptual opposites, harmonizing them as “complementary” to liberalism’s own political ends.

The language of *tawfiq* between women’s public work and her duties in family life was reproduced verbatim in the 1971, 2012, and 2014 constitutions. The 1971 constitution states: “The state shall guarantee the agreement [*tawfiq*] between the duties of a woman toward her family and her work in society, considering her equal status with man in the fields of political, social, cultural, and economic life, without contravening the laws of Islamic shari’a” (Article 11).¹⁵ This constitution introduced something new into the tension between public rights and private duties: religion as potentially opposed to women’s equal rights with men. This clause thus set up a binary between equal work in (secular) society in contradistinction to (religious) hierarchies governing family life. The language of the clause connected equality to *public* rights, while suggesting a different set of gendered *private* duties.

The clause asserting women’s equality to men—but only where this equality does not “violate the rules of Islamic jurisprudence”—found its way into

¹⁴ Jumhuriyyat Misr, “al-Dustur,” 1956.

¹⁵ Jumhuriyyat Misr, “Al-Dustur,” 1971.

an earlier draft of the 2012 constitution. After public uproar, the drafters ultimately opted for broad, unqualified assertions of gender equality. The removal of the clause spoke volumes about the liberal ambitions of the Morsi government, ambitions that were both political and economic. The Morsi government clearly intended to show that women's equality was not antithetical to an Islamic society, to an Islamist president, to government by an Islamist party, or to an "Islamic democracy." Gender inequality remained encoded in the the personal status laws, understood as emblematic of the "rules of Islamic jurisprudence," especially with regards to court testimony, polygamy, and divorce. But the liberal language of the 2012 constitution sublimated these inequalities (in typical liberal fashion) underneath euphoric celebrations of newfound political liberties, pluralism, democracy, and freedom (mentioned no fewer than eight times in the preamble alone). The language clearly rankled activists, who, along with feminists, critiqued this liberalism's dissimulations and hypocrisies, along with its dualisms and paradoxes.

What purpose has the discursive ideology of equality served for the new Egyptian state? The authors of the 2012 constitution clearly aimed to thwart resilient assumptions about the incompatibility of Islam with gender equality. But they also wielded a long-developed discourse of gender equality in Islam as a political tool. This gender equality (and equal rights and duties) has been a pillar of contemporary Islamist ideology, developed in the writings of thinkers like Sayyid Qutb, Abd al-Wahid Wafi, and Muhammad al-Ghazali.¹⁶ Each of them wrote extensively on Islamic notions of women and men's reciprocal rights and duties, on conceptions of Islamic freedom and equality, and on women. Each focused on gender equality as a pillar of social justice and human rights in Islam. It is a principle that Freedom and Justice Party spokeswoman Dina Zakaria reiterated in an interview about the constitution on NPR. Dr. Huda Ghaniyya, one of the drafters of the 2012 constitution and a member of the People's Assembly (the lower house of parliament), similarly defended the constitution's protections of "women's rights, dignity, and freedom" in a video on Ikhwan Tube, a Muslim Brotherhood version of YouTube.¹⁷

Family, Motherhood, and Childhood

The 2012 constitution called for providing free services for motherhood and childhood, a clause that has been interpreted as an Islamist bid to relegate women to the home and force them to be mothers (*USA Today*, CBS News,

¹⁶ Sayyid Qutb, *al-'Adala al-Ijtima'iyya Fi al-Islam* (Cairo: Maktabat Misr, 1949); 'Ali Abd al-Wahid Wafi, *Huquq al-Insan fi al-Islam* (Cairo: Maktabat Nahdat Misr, 1957); Muhammad al-Ghazali, *Huquq al-Insan Bayna Ta'alim al-Islam wa-I'lan al-Umam al-Mutta'hida* (Cairo: al-Maktaba al-Tijariyya, 1963).

¹⁷ Kennedy, "Egyptian Women Worry Constitution Limits Rights." Huda Ghaniyya, *The Huda Ghaniyya, The Constitution Gives You Your Right* (Cairo, 2012), <http://www.ikhwantube.com/video/1671232/>.

Egypt Independent, *International Business Times*, *Ms. Magazine*, etc.).¹⁸ The provision caused an uproar in Arab and Egyptian activist circles, at the World Social Forum, in non-government organizations (NGOs) like the al-Majlis al-Qawmi li-l-Mar'a and the Women and Memory Forum, and in the media, including in *al-Ahram* and *Asharq Al-Awsat*.¹⁹ The clause of "protection" for the family has been understood as emblematic of Islamist "focus on the family," as consigning women to domestic roles, and as opposed to women's rights.

Yet protection of the family, and especially of motherhood and childhood, is hardly unique to the 2012 constitution. It is a clause that made its way directly into Article 10 of the 2014 constitution as well. The clause is derived directly from the 1956 constitution (Article 18) and from the 1971 constitution (Article 10), which also call for supporting the family and protecting motherhood and childhood. These articles might be understood as an Islamist provision, but they are partly influenced and derived from Articles 16 and 25 of the Universal Declaration of Human Rights, promulgated in 1948 just before the Free Officers' Revolution in 1952. The language of protections for motherhood and childhood is not found in the 1923 constitution but is introduced in the later, post-UDHR constitutions. Article 18 of the 1956 constitution says: "The state protects and supports [*takfil al-da'm*] the family, in accordance with the law, and protects motherhood and childhood." Article 25 of the UDHR similarly declares that "motherhood and childhood are entitled to special care and assistance," just as Article 16 calls for protection of the family, by society and state, as a "natural and fundamental group unit of society." Not surprisingly, Article 5 of the 1956 constitution echoes this language, stating that "the family is the basis of society and her [family, *usra*, being feminine] support is religion, morals, and nationalism" (identically transposed into both the 2012 and 2014 constitutions). What we see here is a secularly inflected Islamist vision of the family (2012), as much as an Islamist-inflected secularism (2014), both of which derive from a liberalism that negotiates its own secular/religious divide through conceptions of women's rights and duties, in both public and in private.

The UDHR and its principles were "translated" into Islamic thought in Egypt in widely circulated texts like Muhammad al-Ghazali's *Human Rights Between the Teachings of Islam and the Declaration of the United Nations* (1963), Sayyid Qutb's *Social Justice in Islam* (1949), and Ali Abd al-Wahid Wafi's *Human Rights in Islam* (1957). These thinkers called for freedom, rights, and equality, first under the Egyptian monarchy and later under the

¹⁸Marwa Sharafeldin, "The 'Hareem' of the New Egyptian Constitution," *Egypt Independent*, March 15, 2012; Feminist Wire Newsbriefs, "Women's Right in Question in New Egyptian Constitution," *Ms. Magazine*, December 13, 2012.

¹⁹al-Majlis al-Qawmi li-l-Mar'a, "Huquq al-Mar'a al-Gha'iba Fi Mashru' al-Dustur," *La li-l-Dustur*, November 11, 2012; "al-Dustur al-Misri Yuhammish 'Nun al-Mar'a,'" *al-Sharq al-Awsat*, December 12, 2012; "Sarkhat al-Mar'a al-Misriyya fi Wajh 'Dustur al-Fitna wa-l-Tamayiz.'"

dictatorship of Gamal Abd al-Nasser, as they strategically deployed "rights talk" as a political imaginary against repressive regimes. The family became a place for envisioning—and articulating—a system of reciprocal rights and duties in an Islamic society, symbolically standing in for an Islamic polity in a secular dictatorship that brokered no peace with political Islam. Both the state and opposition parties strategically deployed the language of rights and freedoms as ideological tools during this time.

The 2014 constitution promulgated under Abd al-Fattah al-Sisi reiterates, almost verbatim, the language of the 2012 "Islamist" constitution. It frames the question, though, as one of "social justice" (in Article 8) and "social solidarity" that entail a life of dignity for all citizens, "as outlined by the law." This qualification on equality has resonances and echoes of Article 11 under Sadat's 1971 constitution, where full equality for men and women was decreed, except where it contravened the shari'a. The 2014 constitution echoes the question of equality of opportunities found in these earlier constitutions (including the 2012 constitution), but now in a more gender-neutral tone of equal opportunities for all citizens. Article 10 reiterates that the family is the basis of society, but Article 11 goes further in talking about women's right to "public work," calling for women's representation in parliament and asserting a woman's "rights to take on public employment and high administrative positions in the state and to be appointed to judicial bodies without any discrimination against her." But then the article turns again at the end to protecting women from violence, as well as "protecting motherhood, childhood, pregnant women, aging women, and women in dire need." The clause on higher positions for women in the judiciary and administration is clearly a response to Islamist debates around the issue, even as the 2014 constitution continues to waver between women's right to high administrative positions and her duties and responsibilities in the household. This is clearly not an Islamist provision, but one that is deeply coded into the language of rights-speak included in these constitutions. It is a rights language that carries vestiges of its own moorings in the family, an essential counterweight to an individualistic, rights-based society.²⁰

Personal Status Laws: A Secular Formula?

Criticisms of Egypt's 2012 ("Islamist") constitution have focused on Article 10: "The family is the basis of society, her support is religion, morality, and patriotism." This article has been generally interpreted as an Islamist provision, as flowing from an Islamist emphasis on family values and on women's roles as mothers. Yet Article 10 hardly has its origins in the Islamic ideology of the Freedom and Justice Party, as public commentaries have relentlessly

²⁰ Brown, "Liberalism's Family Values," 135–65.

asserted. Article 10 is taken verbatim from Article 5 (“The family is the basis of society, founded on religion, morality, and patriotism”) of the 1956 constitution under Nasser, who was, by that time, resolutely at war with the Muslim Brotherhood. This historical context, along with the looming moral presence of the UDHR, is utterly critical to understanding this particular formulation of a religious family as the basis of society (rather than politics). Through the constitution, Nasser sought to curb and control the powers of not just the Muslim Brotherhood, but also the influence of the Al-Azhar mosque and the religious courts.²¹ In 1956, Nasser abolished the religious courts, bringing the (religious) laws of personal status under the jurisdiction of the (civil, secular) national courts, in addition to bringing the administration of Al-Azhar under government control. The personal status laws were, nonetheless, still governed by the religious laws of their respective religious communities. In his book *Formations of the Secular*, Talal Asad calls the personal status laws “the expression of a secular formula, defining a place in which ‘religion’ is allowed to make its public appearance through state law,” and where religion is (publicly) relegated to private life.²² Article 10 is a reflection of that “secular formula,” growing out of the state’s complex—and contested—relationship to the (religious) personal status laws. The personal status laws have historically functioned as a means of controlling religious law (partially) by consigning it to the family (and religious property), a tactic first used by colonial regimes in the region. Relegating shari’a to family law served to delimit its sphere of influence.

The role of Islamic law in state legislation has been one of the most contested questions in Egypt’s constitutional history—one that has been manipulated for different political ends by different regimes. One of the biggest obsessions of the media was whether the Morsi government was going to impose religious law. But the personal status laws have come to stand in for (or even replace) religious law in general. Article 2 of *both* the 2012 *and* the 2014 constitution states that “Islam is the religion of the state and Arabic its official language. Principles of the Islamic shari’a are the main source of legislation.” The 2012 and 2014 constitutions’ assertion of Islamic law as “the source of legislation” is closely related to the role of the personal status laws as a repository for religious law in the Egyptian state. It is no accident that the next article, Article 3 (in both constitutions), goes on to define religious law of the respective religious minority communities as the basis for their own personal status laws, reiterating the centrality of religion (and religious law) in governing the personal affairs of the family. Most striking is the virtually identical approaches to hotly contested issues by both the “Islamist” govern-

²¹ Nathalie Bernard-Maugiron, “Personal Status Laws in Egypt,” Promotion of Women’s Rights (Cairo: Federal Ministry for Economic Cooperation and Development, March 2010); Laura Bier, *Revolutionary Womanhood: Feminisms, Modernity, and the State in Nasser’s Egypt* (Stanford, CA: Stanford University Press, 2011), 101–121.

²² Asad, *Formations of the Secular*, 231.

ment of Muhammad Morsi and the more "secular" government of al-Sisi in their imbricated visions of gender, religion, and rights in public and private.

Again, Article 2 stating that shari'a is *the* main source of legislation for the state is not unique to these newer constitutions but is tied to a complex history of negotiations over the role of religious law in state politics. The 1956 and 1971 constitutions declared Islam the religion of the state, but the 1971 constitution added an additional clause asserting that shari'a was *a* main source of legislation (even though the personal status codes were the only laws based on shari'a). In a later constitutional amendment in 1980, the Sadat government would change this to shari'a as *the* main source of legislation (identical to the clause in the new constitution). This clause was designed to counteract the uproar against "Jihan's law," a set of reforms to the personal status laws instituted by emergency decree in the wake of the 1978 Camp David²³ accords with Israel. Because of the long stalemate in Parliament around reforms to the personal status law, the Sadat government argued for an "emergency" type of situation mandating a decree law to effect the changes. The new laws were popularly attributed to Sadat's wife, Jihan, who had led the Egyptian delegation to the International Women's Year conference in Mexico City in 1975²⁴. Reforms long and arduously debated throughout the 1960s were suddenly made into state law by presidential fiat. Needless to say, the Higher Constitutional Court overturned these reforms in 1985 precisely because of the tenuous legal nature of the "emergency." The declaration of shari'a as *the* source of legislation in 1980 was clearly an attempt to appease political unrest over both peace with Israel and "Jihan's law," radical changes enacted by executive power.

Shari'a as *the* source of legislation seemed designed to cushion the blow not only of peace with Israel, but also of the related structural adjustment policies of the late 1970s. The Sadat regime simultaneously issued new laws designed to facilitate women's work in public employment while simultaneously encouraging greater productivity (and economic management) of the household.²⁵ The courts did little to enforce shari'a as the basis of law (other than enforcing the personal status laws), despite a number of cases brought by Islamists in the 1980s to test its applicability.²⁶ Article 2 of the 2012 and 2014 constitutions adopted the language of the 1980 amendment, but without a clear blueprint of its applicability beyond the personal status laws. This legal

²³Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 145–46.

²⁴Jihan Sadat, *A Woman of Egypt* (New York: Simon and Schuster, 2002).

²⁵Ministry of Information, *Al-Marʿa Al-Misriyya: Mishwar Tawil min al-Hijab ila Asr Al-Ubur* (Cairo: Public Information Council, 1976); Julinda Abu Nasr, Nabil F. Khoury, and Henry Azzam, eds., *Women, Employment, and Development in the Arab World* (Berlin: Mouton, 1985); Nadia Hijab, *Womanpower: The Arab Debate on Women at Work* (Cambridge: Cambridge University Press, 1988); Azza M. Karam, *Women, Islamisms and State: Contemporary Feminisms in Egypt* (New York: Palgrave Macmillan, 1997).

²⁶Hallaq, *An Introduction to Islamic Law*, 145–46.

language reinforces the family and gendered relationships as the sphere proper of religion, religious government, and religious law. Both a seemingly Islamist and a seemingly secular government understand religious law as relegated to private issues associated with the personal status laws.

Family: The Unit of the (Neo)liberal Polity

These legal provisions about the inviolability of the family instituted a political division of labor in the social life of the secular state. It is well known that Sadat's overtures to Islamist groups were aimed at harnessing their political power against the socialist left, which stood in the way of Sadat's goals of economic liberalization, privatization, and structural adjustment. These policies began in 1974 (around the time of Nixon's visit to Egypt) and were furthered with Egypt's 1977 agreement with the International Monetary Fund (IMF; on the eve of Sadat's "journey to Jerusalem"). This political and economic liberalization helped contribute to the rise of Islamic groups in Egypt, as they capitalized on newfound freedoms to spread their message.

Sadat's 1971 constitution reintroduced a concept absent from the 1956 constitution promulgated under Nasser: the family as the locus of private property (*amlak* in Article 10). This clause is grouped in a cluster of articles (9–11) that talk not just about family and private property, but also about motherhood and childhood, a gendered division of labor, and women's equality. The clause about the family as the locus of private property resuscitated elements from the earlier "liberal" constitution of 1923, one that declared "homes" and "property" sacrosanct and inviolable (*hurma*), a word connoting not just sacredness, but with feminine overtones of the *harim*, women. These legal provisions cultivated the family as the locus of property, as the sphere proper of women's labor, and as necessary to the proper management of national resources, whether human or material.

The gendered terms of the 1971 constitution set the legislative stage for a series of interrelated processes that included economic liberalization (the Open Door Economic Policy), rapprochement with the USA, peace with Israel, deals with the IMF, structural adjustment, international aid, and loosened restrictions on Islamist groups. Family and women became targeted as key sites of economic reform, especially through the United Nations women and development initiatives. International organizations swooped down on a newly "opened" Egypt. One of their more fervent aims was accomplishing the goals of the International Women's Year, including (economic) development and (economic) equality, in which Jihan Sadat played a key part. After she led a delegation to the International Women's Year conference in June 1975, she presided over a conference at Al-Azhar University on "Makanat al-Mar'a fi al-Usra al-Islamiyya" (The Place of Woman in the Islamic Family), with assistance from the United Nations Population Fund. The conference reiterated the family as a "fundamental unit for building society; a microcosmic image of society itself; society takes from the family its means of government,

organization, and modes of nation building."²⁷ One of the most important products of this international aid was Al-Azhar's International Islamic Center for Population Studies and Research, with projects that continue to be jointly sponsored—and funded by—USAID, UNICEF, and the Ford Foundation.

Commitment to privatization and structural adjustment policies, and, accordingly, to peace with Israel, was born out under the Morsi government, as it sought out bigger and better agreements with the IMF (a \$4.8 billion loan proposed in November 2012).²⁸ The Freedom and Justice Party's Al-Nahda Project, a document that served as a platform for the Morsi presidency and a blueprint for the constitution, could not be more explicit in its commitment to neoliberal expansion.²⁹ One of the first sections of the document (after "Building a Political System") is on "Transforming Into a Development Economy." Women's labor is absolutely essential to this neoliberal vision, as it was to aid projects of the 1980s and 1990s. The document ends with assertions of the importance of women's labor in the household economy and in "private enterprise," asserting that the vision of the Nahda Project "depends on respecting the dignity of the Egyptian citizen and his right to own property."

The Nahda Project speaks the (neo)liberal language of women's equality with men, of the complementarity of their labor, of the importance of finding a gendered balance between work in the family and outside the family, in the household economy and in "private enterprise," in private and in public. This contested—and gendered—territory has been an integral part not only of development projects and discourses in the region (the UN's Women and Development initiative, for example), but also in subsequent Egyptian constitutions that wrestle with the relationship between family duties, "work in society" (1956, 1971), and "public work" (2012, 2014). In *Patriarchy and Accumulation on a World Scale*, sociologist Maria Mies calls this a process of "housewifization" in "the new international division of labor," as capital "rediscovers third world women's importance to the global economy."³⁰ The 2012 constitution's call for an agreement between public work and private duties has also attracted criticism as an Islamist bid to impose Islamic family values on the Egyptian family. I would argue that these "family values" are an integral part of the liberal politics of the new constitution, family values that are not unique to an Islamic society nor to an Islamic polity.³¹ These family

²⁷International Islamic Center for Population Studies and Research, al-Azhar, *Makanat al-Marʿa fi al-Usra al-Islamiyya* (Cairo: International Islamic Center for Population Studies and Research, al-Azhar, 1975).

²⁸Yasmine Saleh and Edmund Blair, "Egypt Agrees Deal for \$4.8 Billion IMF Loan," *Reuters*, November 20, 2012.

²⁹Hizb al-Adala wa-l-Hurriyya, "General Features of the Nahda (Renaissance) Project," IkhwanWeb (April 28, 2012), <http://www.ikhwanweb.com/article.php?id=29932>.

³⁰Maria Mies, *Patriarchy and Accumulation On A World Scale: Women in the International Division of Labor* (New York: Palgrave Macmillan, 1999), 112.

³¹Brown, "Liberalism's Family Values," 135–65.

values shore up a rights-based community, providing a source of communal cohesion in a polity calling for individual liberties. These family values emphasize the importance of private property in the family, managed as an economically productive household economy, as the political and economic unit of a neoliberal polity. The clause attracted little attention when it made its way into the 2014 constitution, which passed with ease under the new military government.

Women's equality with men—in the new Egyptian constitutions, in the Nahda Project, and in the USA's Equal Rights Amendment never passed—has hinged on issues of women's labor in the home and outside the home. Like the 2012 constitution, the Nahda Project also asserts women's equality with men, doing so in a framework that addresses the issue of the balance between women's work in the home and outside the home. This section of the document begins with verse 3:195 from the Qur'an: "I do not squander the work of any worker from among you, whether male or female; you are from one another." The document goes on to derive a principle of commensurability (*mukafa'a*) between men and women "in status and position." From the perspective of liberal feminism (and developmentalist logics), economic participation and economic independence fosters women's equality with men, concepts articulated in this section of the Nahda Project.³² Drawing on the language of the earlier constitutions, the Nahda Project calls for "supporting and empowering the Egyptian woman and facilitating [*ifsah*] the path to her social and political participation in the priorities of national work and development, growing from our belief that women are equal to men in position and status, commensurate in work and importance." The first clause asserts, "We strive toward empowering the Egyptian woman in practice and not just in words, and toward eliminating the obstacles that block her from fruitful participation in all domains of life, particularly those domains that help women to realize a balance between her contributions to home and family and to society." Much like other development documents that talk about empowerment, the elements of economic participation, growth, and "fruits" are understood as fostering economic freedoms, independence, and equality.³³ The Nahda Project explicitly calls for fostering women's participation in small businesses and "private enterprise."

³²Hizb al-Adala wa-l-Hurriyya, "Nahda Project"; Kathi Weeks, *The Problem With Work: Feminism, Marxism, Antiwork Politics, and Postwork Imaginaries* (Durham, NC: Duke University Press, 2011), 64–7.

³³United Nations Development Program, Regional Bureau for Arab States and Arab Fund for Economic and Social Development, *The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World* (New York: United Nations, 2005); Lila Abu-Lughod, Fida J Adely, and Frances S Hasso, "Overview: Engaging the Arab Human Development Report 2005 on Women," *International Journal of Middle East Studies* 41, no. 1 (February 2009): 59–60; Mark LeVine, "The UN Arab Human Development Report: A Critique," *Middle East Research and Information Project* (July 26, 2002).

As with prior constitutions, and prior governments, the issue of women's rights and women's equality has been enmeshed in the question of women's labor, both inside and outside the home. Women represent a critical factor in the state's project of human development, of which women's (human) rights are understood as an essential element. Equality in this sense means two things: the right to economic equality (through formal labor) and reciprocal rights and duties in the family (informal labor). Women play a central role in cultivating the raw human material of the family but also in overseeing private property and private enterprise, the building blocks of the (neo)liberal state. Key articles of the 2012 and 2014 constitutions (Article 10 in both) address this issue, defining women's pivotal importance in mediating between the private and public sectors. Women play a key role in creating an "agreement" or a "balance" (*tawfiq*) between the two realms, one that synchronizes them toward (what the 1956 constitution calls) the "goals of the nation."

Women's Work

Finally, the 2012 and 2014 constitutions broach what has been a long-contested and debated topic in Islamic thought about the legitimacy of women's political participation. Drawing on Islamic writings about women's political participation and leadership, debates that erupted in the 1980s and 1990s, the Nahda Project calls for a campaign to overcome cultural biases about this political participation. The marks of a number of important Islamic feminists, especially thinkers like Ezzat Heba Raouf, can be seen in the document, marks that found their way into the new constitution. In her 1995 book *al-Mar'a wa-l-Amal al-Siyasi* (*Woman and Political Work*), Raouf developed a theory of women's political participation in the Islamic *umma* (*nation*) through "jihad" in the family.³⁴ Drawing on conceptions of the family as the first "cell" of society in modern Islamic thought, she reorients politics in the personal, in the sphere of family relations. This work in the family is what Raouf calls a "non-violent jihad," a "women's' jihad" that effects social change at the level of intimate relations.³⁵ Describing a kind of biopower from the ground up, her Islamic theory of women's political work in the 1990s gave way to a later understanding of the power of informal networks, of community institutions, of micro-politics, and of intimate relations in transforming the larger, seemingly indomitable forces of global politics. She developed this theory in the early 1990s, in the midst of—and in response to—a proliferation of development projects and reports focusing on women, work, and family in the Arab world. This "politics of informality" is what she also terms the "soft force" (*al-quwa al-na'ima*) of "gradual institutional change," a tactic that has long

³⁴Heba Raouf Ezzat, *Al-Mar'a wa-l-Amal al-Siyasi: Ru'ya Islamiyya* (Herndon, VA: Institute of Islamic Thought, 1995), 156–58.

³⁵Ibid., 34.

been one of Islamic organizations' most powerful political tools in Egypt.³⁶ But "soft force" has also become one of the ways of interpreting the power of the new revolutions in the Arab world. Raouf, a political science professor at Cairo University and an Islamist public intellectual, draws on Joseph Nye's concept of "soft power,"³⁷ but she also deploys classical Islamic language of *ni'ma*, of a blessing or of smoothness that also has a feminine connotation of women's softness. The preamble of the 2012 constitution included a notion of "soft force" as its 11th and final principle.

The Egyptian constitution uses the master's tools to dismantle the master's house, to borrow Audre Lorde's famous metaphor in *Sister Outsider*. Lorde also argued that this made "genuine change" impossible. Her essay is a criticism of white feminism's notion of "marital slavery"; according to Lorde, "the need and desire to nurture is not pathological but redemptive" and is its own kind of "freedom" and "emancipation."³⁸ Lorde's ideas would influence feminist activists and theorists like Patricia Hill Collins, who wrote about the social and political value of "motherwork," and bell hooks, who wrote about "homeplace" as a site of resistance in a white world.³⁹ The new constitution clearly uses the language of liberalism—and the techniques of neoliberalism—to imagine a rights-based society, re-envisioning a capitalist democracy in Islamic terms. But the document also envisions a (neo)liberal family structured by notions of an equal—or reciprocal—division of labor between the formal and informal economies, between the private and public, between family and polity. A haven in a heartless world, family shores up community in an age of predatory capitalism and structural adjustment.⁴⁰

Article 10's clause about balancing duties to the family and work outside the home—a concept rife in any mommy blogs in the blogosphere, or in the media storm over Anne-Marie Slaughter's article in *The Atlantic*,⁴¹ or in any number of books and movies about the problem of "having it all"—has been read in the American media as symptomatic of the Islamic character of the new constitution. Rather than being interpreted as a gesture of

³⁶Heba Raouf Ezzat, "Al-Quwa al-Na'ima" (Al-Jazeera Center for Studies, October 13, 2011), <http://studies.aljazeera.net/files/2011/08/20118872345213170.htm>.

³⁷Joseph Nye, *Soft Power: The Means To Success In World Politics* (New York: Public Affairs, 2005).

³⁸Audre Lorde, *Sister Outsider: Essays and Speeches* (New York: Ten Speed Press, 1984), 111.

³⁹bell hooks, "Homeplace: A Site of Resistance," in *Yearning: Race, Gender, and Cultural Politics* (Boston: South End Press, 1990); Patricia Hill Collins, "Shifting the Center: Race, Class, and Feminism Theorizing about Motherhood," in *Motherhood: Ideology, Experience, and Agency*, ed. Evelyn Nakano Glenn, Grace Chang, and Linda Rennie Forcey (New York: Routledge, 1994).

⁴⁰Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York: W. W. Norton & Company, 1995).

⁴¹Anne-Marie Slaughter, "Why Women Still Can't Have It All," *The Atlantic*, August 2012.

acknowledgement of the actual conditions created by a (neo)liberal vision of women's equality and liberation, the American (and leftist Egyptian) press has interpreted these references to the family as repressive. In the various iterations of the Egyptian constitution, it has been recognized that the family has a 'key role ...'⁴²

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⁴²Nikolas S. Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999): 43, 74.

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