DIVINE LAW OR MAN-MADE LAW? EGYPT AND THE APPLICATION OF THE SHARI'A

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INTRODUCTION

The application of the Shari'a has been a central issue in Egyptian politics since the beginning of the seventies. Originally advocated only by Islamic opposition groups, it gained such popularity as a political slogan that the Government could not remain passive. As of 1976 there was feverish and largely government-promoted legislative activity with the aim of codifying and, subsequently, applying the Shari'a. During the first years of the eighties this activity came to a sudden standstill, again at the instigation of the Government. This article will focus on the various legislative proposals to codify parts of the Shari'a and on the public debate surrounding its attempted introduction. Special attention will be given to the Government’s policy in this domain in order to shed some light on the importance of Islam for the legitimacy of the state. In an Appendix a survey will be given of the draft codes of Islamic penal law.

By the end of the last century the Egyptian legal system was largely secularized by the introduction of codes based on French law. Only in the fields of personal status, inheritance, and religious endowments did the Shari'a remain in force. Before the introduction of French law codes there were some suggestions to base at least the civil code on the Shari'a as Turkey had done in 1876, when it enacted the Meccel, a codification of Islamic civil law. However, once the choice of French law had been made, opposition against it ceased.

This opposition reappeared, however, in the thirties with the emergence of Islamic political groups and, especially, the Society of Muslim Brethren. Promoting the creation of a truly Islamic state and an Islamic order whose main characteristic would be the application of the Shari'a, their principal slogan was: “The Koran is our constitution”. How they wanted to apply the Shari'a, however, was not very clear. They were unanimous in their opinion that this did not mean the application of the rules of one single madhhab as laid down in the classical books on fiqh. But beyond that there was little consensus. When they spoke of creating new legislation, derived through interpretation (ijtihaá) on the basis of the public interest (maslaha) from the general principles of the Shari'a, they never specified what actually these general principles were. Were they, for example, general legal maxims, ethical principles, or any legal rule to be found in the paramount source of the Shari'a, the Koran?

In spite of the Muslim Brethren’s vagueness concerning the general application of the Shari'a, they proposed a number of specific legal reforms to adjust the existing legal order to Islamic ideals. In the field of civil law they advocated the nullification of statutory and contractual interest and of speculative contracts such as insurance.

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Further, they advocated the prohibition of the sale and consumption of alcoholic beverages and stricter morality laws.

With regard to the enforcement of Islamic penal law, and especially the Koranic injunctions in this domain (the so-called prescribed penalties (hudud, sing. hadd)), they were of different minds. Some of them, extolling the example of Saudi Arabia where Islamic penal law had already been applied for some time, advocated their immediate application, claiming that this would result in greater security and a decrease in crime. Others, however, were of the opinion that the Koranic punishments for theft and robbery ought not to be introduced before the establishment of a truly Islamic order that guaranteed social justice and eliminated poverty.¹

After the revolution of the Free Officers in 1952 and Nasser’s ascent to power, the Society of Muslim Brethren was outlawed. A number of them, who had been involved in a plot to assassinate Nasser were condemned to death or to long term imprisonment. Many others fled the country. As a result of the suppression of the Muslim Brethren the issue of the introduction of the Shari’a assumed less prominence. While it is true that immediately after the July Revolution some members of the religious establishment had suggested measures in this direction, these aspirations were nipped in the bud when the revolutionary Government announced that it did not advocate any drastic changes in the legal system.²

In the seventies Islam re-emerged in Egyptian politics. Egypt’s defeat in the June War of 1967 was by many regarded as a demonstration of the failure of secular and socialist nationalism, the leading ideology of the Nasser era. They turned to religion for a solution and, as a result, Islamic opposition groups began to mushroom. These groups argued that the cause of the defeat was the fact that Egyptian society had abandoned Islam as a political ideology and as a guiding principle for its organization. During the Sadat era some of these groups received discreet Government support in order to form a counter-force to Leftist and Nasserist organizations, especially at the universities. As a result of the Government’s more favourable attitude towards political Islam, many Muslim Brethren were released from the prison-camps and many others were allowed to return from exile. At the same time the Government began using more Islamic symbols and gave Islam more room in politics. For example, Article 2 of the Constitution of 1971 not only laid down that Islam is the religion of the State—a provision also to be found in previous constitutions—but that the principles of the Shari’a are a principal source of legislation.³

In this period the issue of the application of the Shari’a gained in political importance. With regard to this issue, several tendencies can be distinguished in Egyptian politics. On the one hand there are Islamic political groups varying as to their degree of radicality. Enforcement of the Shari’a is a crucial element of their program. The establishment of a political, economic, and social order based on the Shari’a is in their

² Brugman, op. cit., p. 135.
³ For the discussion preceding the adoption of this provision, see Joseph P. Kane, “Islam in the New Egyptian Constitution: Some Discussions in Al-Ahram”, Middle East Journal, 26 (1972), pp. 137–149.