

‘Semi-Presidential’ Government in Egypt after the Arab Spring: Insights from the Weimar Republic

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1. Constitutionalizing the Arab Spring

1.1. The Arab Spring

Contemporary interest in the so-called ‘Arab Spring’ extends beyond the study of constitutional law or the field of legal studies more generally.¹ One cross-cutting topic that has attracted the attention of jurists and non-jurists alike is the wave of constitutional changes that have accompanied the revolts that have occurred in many Arab countries since 2010. This scholarship generally either discusses constitutional changes in one country in particular or situates it within wider regional or international context.²

By virtue of the level of popular involvement in regime-change, the process through which the Constitution was drafted inevitably attracted the attention of the local population and the international community more generally.³ In engaging with this process, a number of studies touch upon broader themes. These include changes in electoral regimes;⁴ the role of institutions and rules that govern freedom of assembly and speech;⁵ the dynamics of Government;⁶ the democratization process;⁷ the respective roles of the courts,⁸ the army;⁹ the Presidency¹⁰ and revolutionary forces during times of social upheaval;¹¹ other contributions instead touch upon ‘constitutional Islamization’ (specifically its relation to the rise of political Islam)¹², the “counter revolution” (specifically reactionary forces that seek to re-establish the legacies of the recent past¹³ - this erodes the democratic order¹⁴, negatively impacts rights and freedoms¹⁵ and infringes upon the rule of law¹⁶ and equality.¹⁷

This paper aspires to an analysis which cuts across each of these themes. In focusing upon Egypt’s “semi-presidential government”, it draws upon scholarship that has been produced by both lawyers and non-lawyers. Specific emphasis will be placed upon constitutional articles that were introduced or re-confirmed, and which are essential preconditions if a system of government is to be considered semi-presidential. In addition, the article will also focus upon the question of how this constitution and regime impact upon the separation of powers, the rule of law and associated rights and freedoms.

1.3. Egypt’s Semi-Presidential Government

This paper begins with a “post-Duvergerian definition”,¹⁸ which applies the term ‘semi-presidentialism’ to countries which satisfy two criteria: firstly, the executive should evidence the attribute of duality – this entails that the executive will be headed by a (often popularly elected) president, who will draw upon a more or less extensive list of prerogatives; in addition it will also include a prime minister and his/her cabinet, who are individually and collectively responsible to the Parliament and also to the President; secondly, it should be characterized by interdependency between the executive and the ‘House of Representatives’. The Government can therefore – usually subject to the approval of the President - dissolve the House and the House retains the right to ‘positively’ (power of vote) or ‘negatively’ indicate its confidence in the government or measures that it proposes. Once it is acknowledged that semi-presidentialism is a constitutional category within a democratic government that is grounded within the

separation of powers,¹⁹ it becomes increasingly apparent that it is, in the aftermath of the Arab Spring and the effective or aspired transition to democracy, appropriate to apply this label to the Egyptian political system. This is reflected by the fact that external observers appear increasingly predisposed to describe the Egyptian system of government as ‘semi-presidential’.²⁰

A number of observers have referred to the motivations, whether ostensible or genuine, that have contributed to the adoption of semi-presidential government in some Arab countries, and most notably Egypt. Some have, in referring to the consensus that has been achieved in relation to the semi-presidential system, observed that the end result derived from a ‘compromise’ or ‘deal’ between the competing parties that was attained during the making or remaking of the Constitution.²¹ While the preferences of each party are apparently determined by their electoral expectations, some observers have presented semi-presidentialism as a transition towards full parliamentarism.²² Semi-presidentialism has also been presented as a system that enables strong leadership during times of crisis, chaos and incapacity.²³ Semi-presidentialism has also been presented as a more viable system for post-authoritarian countries. From this perspective, it originates within the insight that “a dearth of viable political parties will result in parliaments that are fractured and divided, and consequently unable to provide a platform for stable government”.²⁴

It has also been argued that semi-presidential systems recommend themselves upon the basis that they contribute to the realization of partisan, public or national objectives. From this perspective, it could be argued that the choice of (semi-presidential) government derived from ‘democratic revolutions’ that ended decades of “presidential dictatorship” and contributed to the consolidation of democracy.²⁵ The political system was part of the problem before the Arab Spring and is now – in the guise of the semi-presidential system²⁶ – conceived to be part of the solution.²⁷ In this context, a well-designed semi-presidential system forcibly asserts itself upon the grounds that it enables power sharing.²⁸

1.4. The Weimar Republic as Paradigm

This paper is hardly unique in finding the experience of the Weimar Republic to be an instructive point of engagement. A closer engagement with the literature reveals that it is increasingly recognized that the Weimar Republic was the first historical instance of what Duverger, in referring to the French Fifth Republic,²⁹ would later label as semi-presidentialism.³⁰ Cindy Skach, who has contributed extensively to the theorization of semi-presidentialism as a constitutional category, has previously referred to empirical examples which include, *inter alia*, the Weimar Republic.³¹ Other scholars have instead approached and engaged the Weimar Republic through a more general interest in semi-presidentialism.³²

At this point it should be noted that this paper does not propose to use the Weimar Republic for comparative purposes. Indeed, it would be extremely difficult – and possibly even theoretically impossible – to establish a direct comparison between the Weimar Republic and various Arab regimes. For this reason it would be fruitless to look to the Weimar experience for ‘lessons’ that can be addressed to the contemporary challenges

that confront Arab political systems. The application of the Weimar Republic as a paradigm it might instead be suggested, would be more helpful in identifying the questions that one might ask, as opposed to the solutions that might be applied.³³

I will proceed to demonstrate this point by applying the example of the Weimar Republic from three different angles. I will initially discuss the relationship between the constitution and the republic, and will seek to demonstrate how the drafting of a constitution, and the engineering of a political system can directly influence, or at the very least symbolize, the transition to democracy. I will then proceed to outline the different institutions that are required for a system to be considered semi-presidential in character.

2. A New Constitution for the New Republic

2.1. The Weimar Republic After the First World War

The “Weimar Republic” was the name given to the Republic that was established in Germany between 1919 and 1933. Its name derived from the fact that its foundational legal document, the “Weimar Constitution,” was drafted and adopted in the village of Weimar, which is in South- Eastern Germany. Weimar was chosen as an expedient because Berlin, the national capital, was not safe. The constitution was adopted in the aftermath of Germany’s defeat in World War and the imposition of a humiliating armistice by the country’s wartime enemies.

While the Weimar constitution only lasted for less than 14 years, it was a significant break with Germany’s past, and represented a rich constitutional experience whose experience resonated through subsequent decades and across various contexts. Its influence extended to France’s Fifth Republic (which was established in 1958), a range of post-communist countries³⁴ and also the Arab Spring, which broke out in Tunisia in 2010. ³⁵

When the Weimar Republic was established, it brought the German Empire (1871-1918), a relatively stable system which had been established by the 1871 Imperial Constitution,³⁶ to an end. From this point in time, Germany’s monarchy ceased to exist. Like its predecessor, the Weimar Republic was a federal state.³⁷ However, its legitimacy did not derive from a monarch or the governments of the individual states which composed the federal state, but rather derived from the totality of the German People. Article 1 of the Weimar Constitution, which declared the German Reich to be a republic in which all state power emanated from the people, was explicit on this point. ³⁸

Because the people’s will founded the new political system and its constitution, it might be presumed that the new Republic’s constitution and law would resemble what had come before. This, however, was not the case. The categorical rupture in the state structure required a revision of the role and place of law in the state. Under the Empire, law had previously been relatively stable and “unpolitical”.³⁹ Its status in this regard was reinforced by “statutory positivism”, a legal theory whose concern and conceived role is the interpretation of state law.⁴⁰ This sudden change in the nature and role of law made it possible for the constitutional theorists who drafted the Weimar Constitution to open the way for state law (which roughly encompasses what is currently denoted as procedural, administrative and constitutional law) to develop into what is contemporarily recognized as constitutional law – that is, a body of law that is concerned with the regulation, limitation and organization of the state itself. Whereas law had previously

been conceived as the embodiment of the state's will, it now took the form of the German people's will.

2.2. The Egyptian Republic after the 2011 Revolution

The eighteen days of unrest that followed the outbreak of the uprising on January 25th 2011⁴¹ were sufficient to break Mubarak's 30-year rule of Egypt to an end,⁴² and result in the suspension of the Egyptian Constitution, which had been in place since 1971.⁴³ This historic revolution represented the start of a new political era in Egypt.⁴⁴ Five years later, Egypt had experienced three different presidents, two of whom had been 'democratically' elected.,⁴⁵ Two Parliaments, four constitutional committees/constituent assemblies⁴⁶ ⁴⁷ and three different constitutions⁴⁸ (each of which was confirmed by three popular referenda)⁴⁹ ⁵⁰ would later follow. Each of these constitutions corresponded to a 'revolutionary moment' in the country: the 2011 overthrow of the Mubarak Regime; the 2012 legislative and presidential elections (the first democratic elections in the country); and the 2013 'coup' that removed Mohammed Morsi.⁵¹

The democratic elections which took place in 2011 and 2012 resulted in a clear victory for the Muslim Brotherhood and Islamic parties, who commanded a clear majority in the House of Representatives;⁵² the Muslim Brotherhood's presidential candidate also won the elections in the second round.⁵³ Both developments resulted in a growing polarization within Egyptian society, and this inevitably impacted on the constitution-making process

In fact, despite the fact that the 2012 construction of the Constitution was relatively democratic, the drafting process was divisive,⁵⁴ controversial⁵⁵ and, in the words of e Human Rights Watch,⁵⁶ "extremely contentious". It was accordingly no surprise when the constitutional text later became the source of various controversies.⁵⁷

In 2012, the 'Islamic camp' (the word 'camp' denotes the size of their presence in both houses of parliament⁵⁸) commanded a large majority (65%) in the first Constituent Assembly. This presence later evaporated when the SCC (Supreme Constitutional Court) declared the Assembly to be unconstitutional and dissolved it.⁵⁹ The second Constituent Assembly had a different composition, and included h representatives from outside the Parliament – this innovation did not however contribute to real changes in the Assembly's internal power relations, which still generally favored the Islamist camp.⁶⁰ In the view of some observers, they then proceeded, during the course of the drafting process, to advance their 'real objective' – that is, "a reversal of the [...] legal order: from one of liberal legalism with Islamist accommodation to one of Islamist legalism with liberal accommodation."⁶¹

However, it was not merely the case that the camp commanded a majority – they also proceeded with the drafting process even after some Assembly members – alternately labelled as 'secular,' 'liberal' or 'leftists' or simply non-Islamist⁶² (in addition to church representatives),⁶³ withdrew from the Constituent Assembly.⁶⁴ This action was undertaken with a view to protesting the inflexibility of the Islamist majority,⁶⁵ along with its unwillingness to register and engage non-Islamist contributions.⁶⁶ This action was also conceived as a response to the President's decision to place his decrees above judicial reviews⁶⁷, and the fact that the draft constitution was perceived to be narrow in character, with insufficient acknowledgement of the pluralistic character of Egyptian national identity.⁶⁸

3. A New Constitutional Dress, Made Up of Rags

3.1. A New Regime of Government, Made Up of Old Institutions

The Weimar Constitution similarly gave rise to wide-ranging controversy. The criticism that was most frequently voiced was that it was indeterminate in character. Significantly, the only scholar who defended it whole-heartedly was its drafter, Hugo Preuß. While the constitution that was eventually adopted clearly differed from Preuß's original formulation, the main institutions that he introduced were maintained. As a professor of German Law, his name was henceforth tied to it.⁶⁹

While the document evidenced a clear debt to UK parliamentarism and US presidentialism, Preuß drafted the Weimar Constitution with a clear focus upon Germany's past. British or American constitutional traditions and experiences, in comparison, were a much more marginal influence.⁷⁰ As an established professor of German Law, he was predisposed to draft the constitution in the same spirit as most German law professors of the time, who had lived and worked under the empire for decades. He therefore remained committed to the empire, and not to the republic, and this was reflected in his constitution. In many respects, the text can be conceived as a link or continuity which joins the Empire and the Weimar Republic. This feature is clearly evidenced in the constitution's neglect of parties,⁷¹ its distrust of the Reichstag and the pre-eminence of the president (who was considered to be *EratzKaiser*).⁷² Many of the articles – most notably Article 48, which instilled emergency powers – could be traced back to the Reich constitution of 1871 and the 1850 Prussian constitution.⁷³

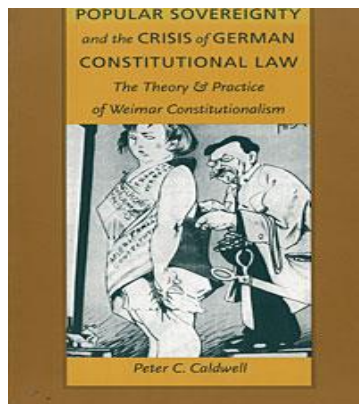
Upon closer reflection, it is clear that Preuß should not be held solely responsible for the so-called 'indeterminacy' of the final text. He was responsible for drafting the initial text, which was then subject to protracted debate within the National Assembly, who were responsible for the adoption of the constitution. Accordingly, it has been observed that: "Myriad compromises found their way into the basic-rights section of the constitution. Thus, the traditional close relationship between church and state was loosened but not severed; the church retained its status as a corporate body constituted by public law and its right to collect taxes. The national assembly similarly opted for "communal schools," that is, schools in which students of various denominations learned together; however, religiously affiliated denominational schools by and large remained the norm."⁷⁴

It should be acknowledged that Preuß's status as a scholar was of more than slight importance. Indeed, it provides a whole different dimension to the relationship between the theory and practice of state law – this is because, in a previous period, the Empire's constitution was, was written by a statesman, Bismarck.⁷⁵ Preuß emphasised the need to avoid separating powers in a way that would enable an uncooperative Reichstag to block the system – this would in turn ensure that the rights of the people would be protected from Reichstag representatives. This model would institute an arrangement in which "the president would appoint a chancellor to head the cabinet, who would at the same time require the confidence of the Reichstag. The president, directly elected by the people, would have a status equal to that of the Reichstag. In case of conflict between president and Reichstag, the president would have the right to call new elections."⁷⁶ In this model, a single-chamber Reichstag would complement a strong president directly elected by the

people – he/she would, when necessary counteract members of the Reichstag who “were elected in a complicated system of proportional representation that allowed voters to cast a ballot for a party, but not a person.”⁷⁷

In seeking to satisfy competing interests and irreconcilable positions, the Weimar Constitution ultimately straddled completely contradictory positions. This was exemplified when the constitution sought to reconcile the need for unity in the new republic with federative states’ rights – in failing to secure an elusive – and perhaps unattainable – balance, the text ultimately converged upon the strange formula of a “unitary federal state.”⁷⁸ The constitution also contained elements that pulled the new republic in different directions; in contrast, within established democracies a compromise was found between these countervailing influences. In the UK, for instance, a compromise was reached between the role of the monarchy and the prerogatives of popular government. Similarly, the US constitution also succeeded in overcoming the tension between equality and property rights by interjecting the scrutiny of the Supreme Court.⁷⁹

In this context it was clearly legitimate to criticize what is currently known as the ‘syncretism’ in the Weimar Constitution. It was therefore conceivable that the constitution itself could be questioned “as part of the debate over constitutional theory and method in the Republic.”⁸⁰ The following cartoon, which was entitled “The Constitutional Dress of 1919” was instructive in this respect.



The cartoon caricatures Hugo Preuß, the author of the Weimar Constitution, presenting him as a Jewish tailor who sought to adorn Germania with a new dress. The constitutional dress is made up of rags from a number of foreign sources: English parliamentarism, French and American constitutionalism and Marxism are all constitutive elements. Germania, looking in the mirror, remarks that: Well, the old dress made out of good German fabric suited me better!”⁸¹

3.2. New Wine In Old Bottles: A ‘New’ system of Government for Egypt

The 2012 constitution was approved by the Constituent Assembly, emerging victorious from the first (67% of votes) and second (57% of votes) rounds of voting.⁸² The fact that it quite clearly did not derive from national consensus⁸³ did not prevent Mohammed Morsi, the incumbent President, from pursuing his objective of subjecting the constitution to a

referendum. The end product was a constitution that polarized politicians, civil society and the general public.

The 2014 Constitution proved to be similarly polarizing, as it was drafted in the aftermath of the military coup by a 50-member Constitutional Committee, whose conclusions were based upon suggested amendments by a 10-member Expert Committee (both committees were appointed by Adli Mansour, the Interim President).⁸⁴ At this point in time, the Muslim Brotherhood was banned⁸⁵ and the new Constitution prohibited political parties from being formed on a religious basis.⁸⁶ Although Al-Azhar and a number of other Islamists scholars were represented, the constitutional committee was largely made up of non-Islamist members.⁸⁷ The constitutional drafting process, in which Islamists were this time the marginalized party, again proved to be highly polarized.

Due to the low level of popular participation in the referendum and the exclusionary character of the constitution drafting process, doubts continued to be expressed about the democratic legitimacy of the 2014 constitution.⁸⁸ These concerns were only marginally offset by the fact that the text entered into force after receiving the approval of an overwhelming majority in a referendum. At this point of the discussion, however, it is imperative to put aside these discussions and to instead focus upon content of these constitutions. While the discussion will predominantly focus upon the 2012 and 2014 constitutional texts,⁸⁹ intermittent reference will be made to the 1971 Constitution.⁹⁰

Upon initial inspection, it appears that the amendments included in the 2014 Constitution were minimal in comparison to its predecessor. The main focus appears to have been upon those parts of the constitution that had been extensively drawn upon by the Islamist block during the drafting of the previous constitution. In some cases, the 2014 Constitution amended the 2012 Constitution by re-introducing provisions that had initially been present in the 1971 Constitution! It is particularly instructive to note that both constitutions drew strongly upon the 1971 Constitution. To put it slightly differently, the new Egyptian constitutional dress appears to have been made up of old rags.

In the following discussion, I will initially present the main changes that were introduced by the 2014 constitutional text. These will be drawn out with reference to the 2012 and, to a lesser extent, 1971 Constitutions. I will then seek to demonstrate that the 2012 and 2014 constitutions are strongly characterized by their indeterminacy. I will also demonstrate that, while a number of the ‘problems’ pertaining to the 2012 Constitution were resolved, these ‘improvements’ were largely offset by the partial regression of important rights and freedoms and infringement upon the semi-presidential system of government.

A number of articles were identical to those within the 1971 Constitution. These included the article that referred to popular sovereignty as the source of state authority;⁹¹ the reference to Islam as “the religion of the state”; and the adoption of Islamic Sharia as “the main source of legislation.”⁹² In comparison to the 1971 Constitution, the 2012 and 2014 Constitutions did however contribute certain improvements to the system.⁹³

While it retained most of its predecessor, the 2014 Constitution also introduced important amendments. These related to the place and role of Islam and religion (particular emphasis was placed upon political parties based on religion) and the system of government (particular emphasis was placed upon the president, the military and the

SCC; important rights and freedoms, particularly those relating to women, were also recognised.

Two of the amendments introduced by the 2012 Constitution made the generic reference to Islam and Islamic law somewhat problematic.⁹⁴ The first amendment is related to the determination of principles of Islamic Sharia for the purposes of Article Two of the constitution ;⁹⁵ the second amendment is related to the role of the Al-Azhar Scholars in matters pertaining to Islamic Shari'a.⁹⁶ These institutional arrangements made the constitutional system dependent on principles that are found outside the Egyptian constitutional system proper, while enabling a religious authority (Al-Azhar) to judge the state's compliance with Sharia Law. Although the 2012 constitution only lasted for a short period of time, the *şukūk* Bill Case put this arrangement to the test. This resulted in a constitutional crisis when the Body of Al-Azhar Senior Scholars declared that the draft bill contradicted Sharia. The foundation of this conclusion was, however, not clearly articulated by the scholars.⁹⁷

The 2014 constitution, in deleting these two amendments, again appeared to put the state back on the 'right' secular track by subjecting it to the scrutiny of the SCC.⁹⁸ The 2014 Constitution also prohibited the formation of political parties on a religious basis, and thus further entrenched the exclusion of *Islamist* parties (who had won the majority of seats in the 2011 and 2012 legislative and presidential elections). This feature of the 'new' Egyptian constitutional system had also been present in the 1971 Constitution.⁹⁹

In reforming the system of government, the new 2014 constitution abrogated the upper chamber of Parliament (the Shura Council) and left in place a unicameral parliament (the People's Assembly).¹⁰⁰ It also instituted the Parliament's right to withdraw confidence from the president,¹⁰¹ and put in place provisions through which he/she could be impeached (for "breaching the provisions of the constitution)."¹⁰² The emergency time (subsequent to approval by the House of Representatives or, in specific circumstances, the cabinet)¹⁰³ was reduced to half.¹⁰⁴ The right of the President to dissolve the House of Representative was maintained, although this right was subject to popular approval by a referendum.¹⁰⁵ The constitution, however, no longer required the President to resign if the referendum failed to approve the dissolution decision.

A number of the amendments to the constitution can however be considered to be regressive for the reason that they significantly empower the president in relation to the government and the parliament. This is the case with regard to the amended procedures for the appointment of prime minister and the requirement that the cabinet, upon being established, must obtain the confidence of the President. The President also has the prerogative to appoint specific ministers.¹⁰⁶ Both the 2012 and 2014 constitutions institute an arrangement in which the Defense Minister is the Commander-in-Chief of the Armed Forces, who is appointed by its officers.¹⁰⁷ However, the 2014 Constitution added an interim procedure, which establishes that the appointment of the Minister of Defence requires the approval of the SCAF (Supreme Council of the Armed Forces).¹⁰⁸ In addition, the military budget is now discussed as a single figure in the state budget.¹⁰⁹

The 2014 Constitution also significantly enhanced the President's power by putting in place an arrangement in which he/she appoints up to 5% of the members of the House of Representatives;¹¹⁰ in addition, he/she also retains the right "to object to laws".¹¹¹ The 2014 Constitution changed the terms under which the President assumes and revokes

office. It is now possible, for instances, in which the House of Representative is dissolved, for him/her to take oaths and present his/her resignation to the SCC, which is now composed now of “sufficient number of deputies to the [SCC’s] President”.¹¹² This replaces the previous arrangement, in which 10 members, in addition to the SCC’s president, constituted this organ.¹¹³

The new constitution also stipulates that judicial bodies will have an independent budget that will be incorporated in the state budget as a single figure.¹¹⁴ The Prosecutor-General is now appointed by the Supreme Judicial Council, as are the deputies who work under the President of the Court of Cassation.¹¹⁵ The 2014 Constitution also creates a new Supreme Police Council, which must be consulted on any laws pertaining to the police force¹¹⁶ - in effect, this gives the Interior Ministry a veto over any laws that seek to reform the police.¹¹⁷ The 2014 Constitution also includes an article which relates to the so-called ‘War on Terrorism’.¹¹⁸

With regard to the status of rights and freedoms, the 2014 constitution appears to have contributed some real improvements. The Constitution clearly stipulates that the state’s commitment to international human rights covenants and agreements should be duly ratified.¹¹⁹ In addition, the Constitution upholds equality between men and women, and commits the state to protect women against all forms of violence, and promote their empowerment.¹²⁰ The equality of each individual citizen is also affirmed by the newly-introduced Article 53, which establishes that discrimination and the incitement of hatred is a crime; it also commits the state to take all necessary measures to eliminate all forms of discrimination.¹²¹ Torture is also prohibited “in all its forms and manifestations”,¹²² and the same applies to forced exploitation and human trafficking.¹²³ The Constitution also prohibits any kind of censorship (forfeiture, suspension or closure of newspapers and Egyptian media)¹²⁴ and seeks to protect intellectual property.¹²⁵

In other respects however, the 2014 Constitution was a clear disappointment.¹²⁶ While it explicitly states that the freedom of belief is “absolute”, it also limits the practice of religion to the three monotheistic religions; in addition, it also puts in place an arrangement whereby the building and renovating of churches will be regulated by a law.¹²⁷ The 2014 Constitution also removed an article which previously made it a crime to “insult any messengers or prophets.”¹²⁸ The new constitution prohibits arbitrary forced displacement but limits this guarantee to citizens.¹²⁹ Political representation of workers and farmers in the House of Representatives is left to the la.¹³⁰ and work is instituted as a right (forced labour, in contrast, is forbidden - unless “required by law”).¹³¹

4. The Institutions of a Semi-Presidential Government

4.1. Executive-Legislature Interplay

The Weimar Republic can be defined as the first instance of what would later be labeled as ‘semi-presidential’ government. This model of government is not exclusively defined by the fact that it has a president who was elected directly by the people (for seven years in the case) who retains an executive authority that is exercised through the constitution (this is also the case with presidents in presidential regimes);¹³² to the same extent, it is not indicated by a government which requires the confidence of parliament (whose authority is in turn counterbalanced by the fact that the executive retains the right to dissolve the parliament – this feature is exclusive to purely parliamentary regimes);

rather, it is the co-existence of these two institutional arrangements in a single regimes that defines it as ‘semi-presidential’. Observers of such regimes have often noted, depending on electoral outcomes and the personalities of people exercising authority – the tendency for them to swing between presidentialism and parliamentarism.¹³³

In previous research I have advanced the argument that this reading of semi-presidentialism is profoundly unsatisfactory. Accordingly, I suggested that it would be more appropriate and sustainable to think of semi-presidentialism as a separate constitutional type – this would apply irrespective of the ideas that drafters had in mind when they originally constructed the Weimar Constitution or the constitution of the French Fifth Republic. This new type of constitution can be largely attributed to the practice that followed the adoption of these two constitutions – this in turn made it possible for one person (the president, acting in his/her role as head of state) to perform the role of a allegedly ‘neutral’ moderator in the political system, thus interceding between the parliament and the government.¹³⁴ This assumed role can be in large part attributed to constitutional prerogatives introduced in those two constitutional texts and the ensuing practice.

This type of regime was embodied in the creation of the Weimar Constitution ([*Weimarer Reichsverfassung*]). For the first time, the constitution contained a list of basic rights (this was clearly contrary to the constitution that was previously in force in Germany).¹³⁵ This innovation was only unique within the history of Germany. The feature that actually set the constitution apart as a unique constitutional innovation was the “complicated interplay among the Reichstag, the president of the Reich [*Reichspräsident*] and the government of the Reich [*Reichsregierung*].”¹³⁶

Egypt opted for semi-presidential government in the 2012 and 2014 Constitutions. The semi-presidential character of the political system was implicitly (actions) and explicitly (words) indicated by the drafters of the constitution and the supporting cast of political actors..¹³⁷ This feature can also be extracted from a closer examination of the political system itself, as a number of institutional features quite clearly correspond to the original typology.

Here it should be emphasised that the question of whether a regime is semi-presidential or not is far from a purely abstract or theoretical question – it can impact strongly upon the political system itself, and fundamentally alter the distribution of prerogatives between various organs of the state. In 2012, for example, the Egyptian Administrative Court cancelled a Presidential decree which argued, *inter alia*, that “the 2012 constitution establishes a semi-presidential system of government, according to which the President of the Republic has to share executive authority with the Government.” The court also referred to Article 141, which clearly establishes that all of the President's powers, apart from a small number that are specifically listed, are to be exercised through the Prime Minister.”¹³⁸

Egypt’s 2012 and 2014 Constitutions also established a regime in which the President, directly elected by the population, would also (whether directly or through the Government) would exercise executive authority. At the same time, it should be recognized that the Government requires the continued confidence of the parliament if it is to exercise executive power. This majority is essential if it is to continue to function. In

each of these respects, the Egyptian political system satisfies the criteria which are required if a system is to be denoted as semi-presidential.

The President also plays an essential role in helping to maintain the balance between state authorities – he/she is particularly prominent at times of crisis, thus helping to offset the danger of deadlock in the system. Under certain circumstances, the President has the power to dissolve the House of Representative and to nominate a Prime Minister, who is assigned the task of forming a government that can retain the confidence of the House of Representatives. In instances where this confidence is not forthcoming, the House of Representative is dissolved. The Egyptian constitutions adopted the so-called premier-presidential regime (a sub-category of semi-presidential regimes)¹³⁹ because it enabled the House of Representatives to withdraw confidence from Government, while denying the President this right.

4.2. The ‘Guardian of the Constitution’

The President has established constitutional prerogatives that enable him/her to directly connect with the population through the means of a referendum.¹⁴⁰ In this instance the referendum becomes a *plebiscitary* tool that the President can apply with a view to enhancing his/her claim to democratic legitimacy. This claim is advanced, it should be noted, in opposition to a rival democratic claim that is advanced by representatives in the National Parliament.¹⁴¹ In this instance, the President is transformed from a neutral moderator into a real political leader, whose claim to authority extends beyond the constituted *powers* of the Parliament, Government, and Judiciary.

While constituted powers are subject to the principle of a separation of powers and are delimited by the constitution itself, the perception of a presidential role that extends beyond constituted powers is necessitated by the threat that the separation of powers may contribute to the paralysis of the overall system. In instances where the national unity or the existence of the state is in danger. He/she decides when unity is present, embodying authority in place of indecision and leadership in place of inertia. In this context, the Weimar Constitution’s allusion to the president as the “Guardian of the Constitution” takes on a whole different meaning and implication. The ‘Guardian of the Constitution’ exists in the space beyond the daily politics which determines constituted powers. He/she alone has the authority to decide when a constitution is in imminent danger; furthermore, he/she alone has the right to decide upon the appropriate course of action that should be undertaken in response. The sheer range of permissible intervention is explained, in large part, by the fact that the president is perceived as a neutral, authoritative actor who is tasked with upholding the coherent functioning of the constitutional order. This presidential prerogative was supposed to be compatible with the role assigned to the Federal Supreme Court [*Reichsgericht*], which was supposed to be the relevant source of reference for disputes pertaining to the law of the state [*Staatsgerichtshof*].¹⁴²

It is at this point that Article 48, the infamous “dictatorship article”,¹⁴³ of the Weimar Constitution presents itself. This article was concerned with the emergency powers of the president, his power to rule by decree and his broad entitlement to, as supreme commander¹⁴⁴ of the military, to order military forces to intervene. While it was reproduced from previous German constitutions, this article took on an entirely new meaning in this changed context. It made the *Republic’s* President, in the words of Friedrich Meinecke, the noted historian, an *Ersatzkaiser*.¹⁴⁵ However, it should be noted

that noted that his/her powers were, far from being extraordinary or exceptional, also immersed in the practicalities of day-to-day politics.

The Egyptian Constitution also, through the device of the referendum, establishes a clear connection between the President and the people. This is held to be a ‘right for citizens,’ including those living abroad,¹⁴⁶ which enables them to express their opinions on public affairs – in this manner referendums and elections become endowed with the same level of participatory significance.¹⁴⁷ There are also instances where the constitution explicitly establishes that a referendum must be held. These include constitutional amendments,¹⁴⁸ the ratification of treaties of peace and alliance and treaties related to rights of sovereignty.¹⁴⁹ The constitution also requires a referendum be held to approve the President’s decision to dissolve the House of the Representatives.¹⁵⁰ A referendum should also be held in the aftermath of the House of Representatives’ decision to withhold confidence from the President.¹⁵¹

However, the actual calling of the referendum, unless the Constitution states otherwise,¹⁵² is the responsibility of the President. It is the President alone who decides when to call a referendum and he/she is entitled to do so whenever he/she deems this necessary and in the “supreme interests” of the country.¹⁵³ There are no other substantive limitations that restrict his/her discretion in this regard. The 2012 Constitution even advanced the position that the results of a referendum should be “binding to all state authorities and the general public in all cases.”¹⁵⁴ However, after the relevant paragraph was deleted from the 2014 Constitution, the political significance of referendum results is now contingent upon the way that political actors, and in particular the Egyptian SCC, choose to interpret them.

To put it differently, the referendum will inevitably come to serve the purposes of the Egyptian President, operating as a *plebiscitary* tool that enables him/her to overcome, citing the *general will* of the people as justification, the partisan will of constituted authorities. In doing so, he/she will prioritize the supreme interests of the state, which are rightfully given pre-eminence over the ordinary interests of individuals and groups *within* the state. This furthers the impression that the President is beyond the Parliament, Government and Judiciary. Through his/her application, the referendum comes to function as the complete expression of a *sovereign* people¹⁵⁵ organized politically in a *sovereign* state.¹⁵⁶

The President enjoys substantial discretion with regard to the declaration and implementation of a state of emergency. This can last for up to three months and, during this period, there are no substantial limitations which restrict the President’s power. In place of ‘limitations’ it would perhaps be more appropriate to speak of ‘requirements’. The President is therefore required to engage in prior ‘consultation’ with his/her Cabinet and submit the declaration to the consideration of the House of Representatives within seven days. The House of the Representatives needs to approve the declaration of the state of emergency with a majority of votes. Further extension of the state of emergency requires a two-thirds majority in the House.¹⁵⁷

It is striking to reflect upon the fact that, under certain circumstances, the President is permitted to effectively govern alone and that the restrictions to this authority are primarily procedural in character. The Constitution also – with the exception of

prohibiting the dissolution of the House of Representatives – does not clearly indicate what can happen during the State of Emergency.

While there is no direct reference to the suspension of the Constitution and constitutional arrangements during the state of emergency, comparative experience, in addition to Egypt's political history, predispose us to assume that full powers will be invested in the President, who in serving in his capacity as Supreme Commander of the Armed Forces, will govern with the help of the Armed Forces.¹⁵⁸

The President's power to create laws is not limited to times of emergency. He/she has the power, under certain circumstances, to issue decrees that have the power of law.¹⁵⁹ In the period between 2011 and 2016, three successive Presidents sought to govern through decree. In large part, this course of action was necessitated by the dissolution of the Egyptian Parliament in 2012. When Al-Sisi was elected in 2014, and the government was dissolved, he effectively acted as a "one-man legislator." By August 2015, he had issued over 175 decrees and decree laws,¹⁶⁰ which focused mainly "on military and security affairs, as well as the consolidation of the state and its institution."¹⁶¹ Five months later, a further 88 decrees and decree laws increased the overall total to 263.^{162,163} In the aftermath of legislative elections in October-December 2015, the Parliament was confronted by the overwhelming task of reviewing "within 15 days" all decree laws. In the absence of approval, these legal provisions would be retroactively revoked. The Parliament, which began its first session in January 2016, was at the time struggling to come to terms with this formidable task.¹⁶⁴

4.3. The "Duality" of the Executive

The Weimar constitution sought to put in place a strong president (*Reichspräsident*), whose prerogatives would extend beyond those that are usually allocated to a head of (republic) state. Whereas the Reichstag was established through impersonal elections (with members being selected from party lists)¹⁶⁵ the president was, for the first time in German history, directly elected by the German people. He was responsible for nominating the chancellor (whose office closely resembled a prime minister), and was entitled to dismiss him or any other minister.¹⁶⁶ The chancellor was then required to form a government that is able to command the full confidence of the Reichstag.¹⁶⁷ The original drafters of the constitution had envisaged that this arrangement would keep the Reichstag at the center of the new regime.^{168 169} However Hugo Preuß was fully cognizant of the French Third Republic and the paralysis of the parliamentary regime,¹⁷⁰ and therefore favored a president who would assume a political role by acting as a counterweight for changing majorities.¹⁷¹ This was held to be necessary "to protect the polity from factional fighting".¹⁷²

The co-existence of dual executive institutions could be said to be the key defining feature of this regime. In the initial plans which the drafters outlined, this duality was not an inscribed feature.¹⁷³ The president was indeed intended to govern, but he/she wasn't supposed to directly rule, at least outside of times of emergency. During times of normalcy, the government functions as the executive authority and is headed by the chancellor. In times of emergency the president intervenes directly, with the consequence that the chancellor appears as "his henchman".¹⁷⁴ Presidential prerogatives that are

exercised outside times of emergency are operationalized through decrees that require the counter-signatures of the respective minister or the chancellor.¹⁷⁵ This establishes a clear contrast with presidential regimes. In this instance the president is the executive authority. He/she is assisted by secretaries of state who do not represent a collegial body and who are incapable of exercising independent executive authority through their own volition. The Weimar Republic government is therefore, in combination with the president, the established executive authority. The constitutional prerogatives of the president and the chancellor were not therefore supposed to be exercised in parallel or simultaneously.¹⁷⁶

Whereas in parliamentary regimes the majority party composes the government, the Weimar Republic government did not necessarily reflect the composition of the parliament. Even in instances where a majority was not attained, it was still conceivable that a government of marginal parties or even of technocrats¹⁷⁷ could be put together. The only condition in this respect was that any government would require the confidence of the parliament. In reflecting upon similar regimes, scholars have previously invoked “constitutional dictatorship”¹⁷⁸

The preceding outline of government-parliament relations and interactions raises the possibility that the system will ultimately become deadlocked. Whenever the government’s operations are frustrated by an obstructive parliament or the lack of a governing majority, the president is permitted to dissolve the parliament, in the expectation that the electoral process may be able to overcome political deadlock.¹⁷⁹ Presidential rule-by-decree also remains as a political resource of last resort. The drafters of the Weimar Constitution sought to put in place a range of counter-balances that would cancel out these strong presidential prerogatives. This was exemplified by the limitations that were imposed upon the dissolution of parliament, and the restrictions that impinged upon the president’s ability to apply his/her emergency powers or legislate by decree.¹⁸⁰ However, the potential political impact of elections wasn’t sufficiently acknowledged or taken into account by the drafting parties. This was a particularly important oversight because elections could potentially determine the sub-type of semi-presidential regime that could be formulated in practice.¹⁸¹ This varied between: 1) a consolidated majority government (this is in place when a single party accounts for both the president and a parliamentary majority). ; 2) A divided majority government or ‘co-habitation’: this is in place when the parliamentary majority forms a government that enjoys the support of parties opposed to the president’s; 3) A divided minority government: this applies in instances where “neither the president nor the prime minister nor any party or coalition enjoys a substantive party majority in the legislature”.¹⁸²

While the original drafters of the Weimar Constitution envisaged a stable parliamentary system in which the designated government enjoyed the support of the Reichstag (this most closely resembles the first sub-type), they were fully aware of the danger that an obstructive parliament may block the system (this corresponds most closely to the second sub-type). In actual fact, it was the absence of a stable parliamentary majority, which either supported or opposed the incumbent president, which proved to be the most abiding constitutional defect of the Weimar Republic. ¹⁸³

The constitutional framework put in place by the Weimar Constitution, setting the actual intention of its drafters aside, contributed to the formation and consolidation of the most

conflict-prone subtype of semi-presidentialism – so-called “divided political minorities”¹⁸⁴ were accordingly in place for almost half of the Republic’s political existence.¹⁸⁵ In the absence of a clear majority either for or against him, the president of the Weimar Republic was forced to form his own ‘president’s cabinets’ – such cabinets were not contingent upon the confidence of the Reichstag but rather upon his own.¹⁸⁶ This type of government has previously been described as the “most dangerous for constitutionalism and fundamental rights”.¹⁸⁷

In Egypt, in contrast to the Weimar and French Republics, the President’s exercise of executive powers are not constitutionally conditional upon the attainment of the countersignatures of the prime minister or any other ministers. The President can also chair the Council of Ministers whenever he sees fit. The main drawback of this arrangement is that it cannot function in instances of cohabitation. It also entails that the President *is* the real head of the executive authority, who simultaneously governs and *rules*.

In instances where the president is directly elected, as is the case in Presidential and most Semi-Presidential regimes, the President is not accountable to the legislature. Rather, in semi-presidential regimes it is the Government that is responsible to the Parliament. In order to offset the danger that exercises of executive power will not be checked by the legislature, it is usually the case that any exercise of such power requires the countersignature of the competent minister or even the prime minister.¹⁸⁸

When Morsi sought to exercise his prerogatives that were outlined in the 2012 constitution the Egyptian Administrative Court, in one of its most important rulings, maintained – even in the absence of direct constitutional reference – that the President is obliged to obtain the countersignature of the prime minister. The only instance in which this does not apply is when the attentions of the respective actors are addressed to an exclusive presidential power.¹⁸⁹

The 2012 Constitution did not impose any countersignature requirements upon Presidential exercises of decree power.¹⁹⁰ Rather than resolving this deficiency, the 2014 Constitution instead put forward a problematic ‘solution’ - the House of Representatives can now withdraw confidence from the President! By virtue of this amendment, the president now resembles a prime minister – this of course doesn’t make sense: Egypt already has a prime minister and is hardly in need of another one.

In 2011, the Parliament was dissolved in response to the revolution. The Essam Sharaf Government was appointed by the SCAF but did not receive the Parliament’s vote of confidence. Kamal Ganzouri’s Government, which remained in office until Mohammad Morsi assumed power, was dissolved by a decision of the court shortly before Morsi assumed power. Morsi formed a government, which was headed by Prime Minister Hesham Qandil, which was forced to operate in the absence of parliamentary approval (owing to the fact it was still dissolved). Subsequent to the 2013 coup, Adli Mansour appointed Hazem Al Belbawi as his acting Prime Minister. He was then followed by Ibrahim Mahlab, who remained as acting Prime Minister until Abdel Fattah el-Sisi was elected as president. Mahlab was then replaced by Sherif Ismail, who formed a new Government.

In the aftermath of the 2011 elections, all of Egypt's governments functioned without the explicitly indicated confidence of the parliament. In the aftermath of the 2015 elections, which mostly resulted in victories for small parties and political independents,¹⁹¹ it was widely expected that Egypt's political development would, at least for the foreseeable future, correspond to a divided government model, with both the President and Prime minister lacking majority support in the Parliament. Taking into account the earlier discussion of the Weimar Republic, this division of government potentially threatens accountability, the coherence of the overall system and established rights and freedoms.

5. Conclusion

This paper has departed from several received wisdoms that are frequently advanced in the direction of semi-presidential governments. Firstly, it has suggested that there is no theoretical basis for asserting that semi-presidential systems cannot work. Empirical examples of functioning semi-presidencies can also be identified, although here it should be acknowledged that success appears to be the exception rather than the rule.¹⁹² Careful design is one key precondition in this respect – this should actively seek to offset the potential re-emergence of presidential dictatorship.¹⁹³ The transition from autocracy to democracy is also substantially enhanced by the adoption of new constitutions that help prevent the abuses of the past by crafting adequate system of government.¹⁹⁴ Fourth, it should also be acknowledged that, setting aside subtype variations,¹⁹⁵ tension between the President, Prime Minister and legislature is inherent to semi-presidential systems.¹⁹⁶

Egypt's political development in the aftermath of the 2011 revolution suggests that the semi-presidential system should be approached, conceived and understood as part of the solution that can help Egypt transit to democracy, curb excessive Presidential powers and offset the danger of a chaotic and divided parliament. My analysis of the 2012 and 2014 constitutions has therefore suggested a close resemblance to the semi-presidential regime type.¹⁹⁷

Throughout this paper I have sought to highlight the various problems that pertain to the political system put in place by two successive constitutions. This problematic legacy creates clear challenges to the goal of establishing a functional system of government that is based upon the principle of the separation of powers and which is predicated upon internal checks and balance.

I have argued that the failure of the 2012 Constitution to establish a functioning system of government strongly contributed to the crisis in the Egyptian system which preceded and followed the 2013 coup and resulted in the ousting of a democratically elected president.

This paper sought to assess whether the 'semi-presidential regime' that is in place can function as a system of government in Egypt. The experience of the Weimar Republic, the first experience of semi-presidential government was an important reference point in this regard. This provided further insight into how this political system *enables* the government to function; furthermore, it also helps to identify how the separation of powers, which are indispensable for a democratic regime, can contribute a *limitation* of government. While it acknowledged similarities in pre and post constitutional texts/structures,¹⁹⁸ this paper sought to demonstrate how the semi-presidential system can enable and sustain the transition to constitutional democracy

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¹ While there is still considerable disagreement upon the precise terminology that should be applied to the uprisings that have taken place across the Arab world, both Arab and English-speakers commonly speak of an ‘Arab Spring’: See, e.g., Dawood I. Ahmed and Moamen Gouda, *Measuring Constitutional Islamization: The Islamic Constitutions Index*, 38 HASTINGS INT’L & COMP. L. REV. 1, 1-74 (2015); Beau Mullen, *The 2013 Egyptian Coup and the State of Exception*, 171 TELOS 41, 42-53; Wahid Abdul-Majid, *Egypt at the crossroads. Egypt’s future: three scenarios*, 6 CONTEMPORARY ARAB AFFAIRS 17, 1727 (2013); Mohamed A. ‘Arafa, *Egypt between Fear and Reform in its Second Revolution: The Failure to Protect the Fundamental Human Rights Over and Over Again*, 7 ARIZONA SUMMIT L. REV. 149, 149-202 (2013-2014); Shahjahan H. Bhuiyan, *Can Democratic Governance Be Achieved in Egypt?*, 38 INTERNATIONAL JOURNAL OF PUBLIC ADMINISTRATION 496, 496-509 (2015); Bojan Blazhevski, *The Process of Democratization and the Military Rule after the Revolution in Egypt*, 5 SECURITY DIALOGUES 129, 129-143 (2014); Michael Wahid Hanna, *God and State in Egypt*, 31(2) WORLD POLICY JOURNAL 59, 59-69 (2014); Inmaculada Szmolka, *Exclusionary and non-Consensual Transitions versus Inclusive and Democratizations: The Cases of Egypt and Tunisia*, 37 (1) ARAB STUDIES QUARTERLY 73, 73-95 (2015); Nicolas Heliotis, *A Textual Analysis of Presidential Power under the 2014 Egyptian Constitution*, 48 INTERNATIONAL LAWYER (2014); 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*, 11 INT’L J. CONST. L. 646, 646-665 (2013); Muqtedar Khan, *Islam, Democracy and Islamism After the Counterrevolution in Egypt*, 21(1) MIDDLE EAST POLICY 75, 75-86 (2014); Anthony F. Lang, *From revolutions to constitutions: the case of Egypt*, 89 INTERNATIONAL AFFAIRS 345, 345-363 (2013); John Liolos, *Erecting New Constitutional Cultures: The Problems and Promise of Constitutionalism Post-Arab Spring*, 36 B. C. INT’L & COMP. L. REV. 219, 219-254 (2013); James Michael Nossett, *Free Exercise After the Arab Spring: Protecting Egypt’s Religious Minorities Under the Country’s New Constitution*, 89 INDIANA LAW JOURNAL 1653, 1653-1689 (2014); Jackson Maogoto and Andrew Coleman, *The ARAB Spring’s Constitutional Indigestion: Has Democracy Failed in the Middle East?*, 32 LIVERPOOL LAW REVIEW 105, 105-134 (2014); Nathan J. Brown and Mara Revkin, *Islamic Law and Constitutions*, in THE OXFORD HANDBOOK OF ISLAMIC LAW (Anver M. Emon and Rumea Ahmed, eds., 2015); Gamal M. Selim, *Egypt under SCAF and the Muslim Brotherhood: The Triangle of Counter-Revolution*, 37 ARAB STUDIES QUARTERLY 177, 177-199 (2015); Catherine Turner, *Transitional Constitutionalism and the Case of the Arab Spring*, 64 INTERNATIONAL & COMPARATIVE LAW QUARTERLY 267, 267-291 (2015). Some have referred to it as the “Arab Awakening” (see, e.g., Sujit Choudhry, *Constitutional Transitions in the Middle East: Introduction*, 11 I.CON 611, 611 (2013)). Other observers instead spoke of an “Arab Fall” (see, e.g., Joseph H. H. Weiler, *Editorial: The Arab Fall?*, 11 I.CON 11 553, 553 (2013)) or simply “Arab Revolts” (see, e.g. Michel Rosenfeld, *Editorial: Putting the People back in the Constitution: On Arab Popular Revolt and other Acts of Defiance*, 8 I.CON 685, 685 (2010)).

² See, e.g., Gary Jeffrey Jacobsohn, *Theorizing the Constitutional Revolution*, 2 JOURNAL OF LAW AND COURTS 1, 1-32 (2014); Michal Jan Rozbicki, *Constitutions, Culture, and History*, 57 ST. LOUIS UNIVERSITY LAW JOURNAL 447, 447-455 (2013).

³ See, e.g., Bawar Bammarny, *The New Egyptian Constitution of 2012*, 27 ARAB LAW QUARTERLY 281, 281-288; Nathalie Bernard-Maugiron, *Egypt’s Path to Transition: Democratic Challenges behind the Constitution Reform Process*, 3 MIDDLE E. L. & GOVERNANCE 43, 43-59 (2011); James Feuille, *Reforming Egypt’s Constitution: Hope for Egyptian Democracy?* 47 TEXAS INTERNATIONAL LAW JOURNAL 237, 237-259 (2011); Lama Abu-Odeh, *Egypt’s New Constitution: The Islamist Difference*, in CONSTITUTIONAL SECULARISM IN AN AGE OF RELIGIOUS REVIVAL 160, 160-174 (Susanna Mancini and Michel Rosenfeld, eds., 2014); Gianluca P. Parolin, *Constitutions against revolutions: Political participation in North Africa*, 42 BRITISH JOURNAL OF MIDDLE EASTERN STUDIES 31, 31-45 (2015); Nirmala Pillay, *The Rule of Law and the New Egyptian Constitution*, 35 LIVERPOOL LAW REVIEW 135, 135-155 (2014); Mara Revkin, *Egypt’s Constitution in Question*, 5 MIDDLE EAST LAW & GOVERNANCE 331, 331-343 (2013).

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- ⁴ See, e.g., Sahar F. Aziz, *Revolution without Reform? A Critique of Egypt's Election Laws*, 45 GEORGE WASHINGTON INTERNATIONAL LAW REVIEW 1, 1-83 (2013).
- ⁵ See, e.g., Bhuiyan, *supra* note 1.
- ⁶ See, e.g., Szmolka, *supra* note 1; Turner, *supra* note 1.
- ⁷ See, e.g., Szmolka, *supra* note 1; Feuille, *supra* note 3.
- ⁸ See, e.g., Fadel, *supra* note 1; Lama Abu Odeh, *The Supreme Constitutional Court of Egypt: The Limits of Liberal Political Science and CLS Analysis of Law Elsewhere*, 59 AM. J. COMP. L. 985, 985-1008 (2011).
- ⁹ See, e.g., Bernard-Maugiron, *supra* note 3; Blazhevski, *supra* note 1; Robert D. Springborg, *Egypt's Future: Yet Another Turkish Model?*, 49(1) INTERNATIONAL SPECTATOR 1, 1-6 (2014).
- ¹⁰ See, e.g., Heliotis, *supra* note 1.
- ¹¹ See, e.g., Ann M. Lesch, *Troubled Political Transitions: Tunisia, Egypt and Libya*, 21(1) MIDDLE EAST POLICY 62, 62-74 (2014); Abdul-Majid, *supra* note 1.
- ¹² See, e.g., Mohamed A. Arafa, *Whither Egypt? Against Religious Fascism and Legal Authoritarianism: Pure Revolution, Popular Coup, or a Military Coup d'État?*, 25 INDIANA INTERNATIONAL & COMPARATIVE LAW REVIEW 859, 859-897 (2015); Ibrahim Awad, *Breaking out of authoritarianism: 18 months of political transition in Egypt*, 20(2) CONSTELLATIONS 275, 275-292 (2013); Dawood Ahmed and Tom Ginsburg, *Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions*, 54 VIRGINIA JOURNAL OF INTERNATIONAL LAW 615, 615-695 (2014); Luna Droubi, *The Constitutionality of the Niqab Ban in Egypt: A Symbol of Egypt's Struggle for a Legal Identity*, 56 NEW YORK LAW SCHOOL LAW REVIEW 687, 687-709 (2011/2012); Mohammad Fadel, *Modernist Islamic Political Thought and the Egyptian and Tunisian Revolutions of 2011*, 3 MIDDLE EAST LAW & GOVERNANCE 94, 94-104 (2011); Gianluca P. Parolin, *Shall We Ask Al-Azhar: Maybe Not null*, 7 MIDDLE E. L. & GOVERNANCE 212, 212-235 (2015).
- ¹³ See, e.g., Khan, *supra* note 1; Selim, *supra* note 1.
- ¹⁴ See, e.g., David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS LAW REVIEW 189, 189-260 (2013); Awad, *supra* note 12; Sahar F. Aziz, *Bringing Down an Uprising: Egypt's Stillborn Revolution*, 30 CONNECTICUT JOURNAL OF INTERNATIONAL LAW 1, 1-27 (2014).
- ¹⁵ See, e.g., 'Arafa, *supra* note 1; Ahmed and Ginsburg, *supra* note 12; Droubi, *supra* note 12; Nossett, *supra* note 1.
- ¹⁶ See, e.g., Ahmed Eldakak, *Approaching Rule of Law in Post-Revolution Egypt: Where We Were, Where We Are, and Where We Should Be*, 18 U.C. DAVIS JOURNAL OF INTERNATIONAL LAW & POLICY 261, 261-306 (2012).
- ¹⁷ See, e.g., Clément Steuer and Alexis Blouët, *The Notions of Citizenship and the Civil State in the Egyptian Transition Process*, 7 MIDDLE EAST LAW AND GOVERNANCE 236, 236-256 (2015).
- ¹⁸ Robert Elgie applies this term in the course of elaborating what he presents as a relatively standard definition of 'semi-presidentialism'. See Robert Elgie, *Three waves of semi-presidential studies*, 23 DEMOCRATIZATION 49, 52 (2016).
- ¹⁹ Duverger, the first writer to extensively theorize semi-presidential regimes, suggests that this category should be exclusively applied to democratic regimes and not to their authoritarian counterparts. Refer to Eric Millard, *Duverger's Arguments on Semi-Presidentialism: A Critical Analysis*, 1 ROMANIAN JOURNAL OF COMPARATIVE LAW 11, 12-13 (2014).
- ²⁰ For general insight, refer to Szmolka, *supra* note 1, at 86; 87; SEMI-PRESIDENTIALISM AS POWER SHARING: CONSTITUTIONAL REFORM AFTER THE ARAB SPRING (Center for Constitutional Transitions at NYU Law & International Institute for Democracy and Electoral Assistance, 2014); Sujit Choudhry and Richard Stacey, *THE 2012 CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT: ASSESSING HORIZONTAL POWER SHARING WITHIN A SEMI-PRESIDENTIAL FRAMEWORK* (Center for Constitutional Transitions at NYU Law, 2013).

²¹ See Mohammad Fadel, *What Killed Egyptian Democracy*, 39 NEW DEMOCRACY FORUM 10, 13 (2014); Inmaculada Szmolka, *Political Change in North Africa and the Arab Middle East: Constitutional Reforms and Electoral Processes*, 36 ARAB STUDIES QUARTERLY 128, 133 (2014).

²² See Lang, *supra* note 1, at 363.

²³ See SEMI-PRESIDENTIALISM, *supra* note 20, at 9.

²⁴ *Id.*, at 37.

²⁵ *Id.*, at 9.

²⁶ *Id.*, at 31.

²⁷ *Id.*, at 9.

²⁸ *Id.*, at 10.

²⁹ See *supra* note 19.

³⁰ Although it is frequently claimed that Duverger was the first individual to apply the concept of semi-presidentialism (Maurice Duverger, *INSTITUTIONS POLITIQUES ET DROIT CONSTITUTIONNEL* (1970) is often cited alongside this claim), he was apparently substantially anticipated by Hubert Beuve-Méry, a journalist, and director of *Le Monde*, who used the term around 11 years previously to describe the French Fifth Republic. See, Millard, *supra* note 19, at 12.

³¹ See Cindy Skach, *The "newest" separation of powers: Semipresidentialism*, 5 INT.L.J. CONST. L. 93, 93-121 (2007).

³² See, e.g., Yu-chung Shen, *The Anomaly of the Weimar Republic's Semi-Presidential Constitution*, 2 JOURNAL OF POLITICS AND LAW 35, 35-43 (September 2009); José Antonio Cheibub, *Making Presidential and Semi-presidential Constitutions Work*, 87 TEXAS LAW REVIEW 1375, 1375-1385 (2009); Millard, *supra* note 19, at 11-34.

³³ See Asem Khalil, *Beyond the Written Constitution: Constitutional Crisis of, and the Institutional Deadlock in, the Palestinian Political System as Entrenched in the Basic Law*, 11 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 34, 72 (2013).

³⁴ See Cindy Skach, *BORROWING CONSTITUTIONAL DESIGNS: CONSTITUTIONAL LAW IN WEIMAR REPUBLIC AND THE FRENCH FIFTH REPUBLIC* (2011), 1.

³⁵ SEMI-PRESIDENTIALISM, *supra* note 20.

³⁶ See Peter C. Caldwell, *POPULAR SOVEREIGNTY AND THE CRISIS OF GERMAN CONSTITUTIONAL LAW: THE THEORY & PRACTICE OF WEIMAR CONSTITUTIONALISM* (1997), 3.

³⁷ Arthur J. Jacobson and Bernhard Schlink, *WEIMAR: A JURISPRUDENCE OF CRISIS* 9 (2000).

³⁸ *Id.*

³⁹ See Caldwell, *supra* note 36, at 3.

⁴⁰ *Id.*, at 4.

⁴¹ Unless indicated otherwise, all references to events in Egypt in the following paragraphs are taken from: LIBERTAS (Constitutional Consulting), *THE ARAB WORLD IN TRANSITION: CONSTITUTIONAL TIMELINES FOR TUNISIA, EGYPT AND LIBYA* (n.d.). <http://www.libertascc.com/#!timelines/c13mv> (accessed Jan.19, 2016).

⁴² Popular unrest broke out in Egypt on January 25, 2011. This culminated in the overthrow of Hosni Mubarak, who had been president of Egypt since October 14th, 1981, less than a month later.

⁴³ The Egyptian constitution of 1971 was officially suspended by the Supreme Council of the Armed Forces (SCAF) in February 13, 2011. It was replaced by SCAF's 62-article interim constitution (which is also known as the 'constitutional declaration').

⁴⁴ See Aziz, *supra* note 4, at 3.

⁴⁵ After the January 25th revolution, SCAF assumed legislative and executive powers, and its chairperson acted as head of state. Since then, there have been three different presidents: 1) Mohammed Morsi was sworn in as Egypt's new President in June 30, 2012; 2) Adli Mansour, the President of the Egyptian Supreme Constitutional Court, was named by SCAF as acting president, after Mohammed Morsi was ousted on June 3rd, 2013; 3) Abdel Fattah el-Sisi, the former SCAF Chairman, was elected in the presidential elections that took place between 26 and 28 May, 2015.

⁴⁶ The election of the deputies in the People's Assembly, which took place on January 21th 2012, were the first democratic elections that followed the January 25th Revolution. They overwhelmingly returned the Muslim Brotherhood and other Islamist parties. Elections to the upper-house of parliament (Majles Al-Shoura), which followed a month later, produced a similar result. The SC, however, declared the 2011 electoral law to be unconstitutional, and SCAF took the decision, on June 15th, 2012, to dissolve the parliament. This occurred less than a month after presidential and fifteen days before the new President, Mohammed Morsi, was due to be sworn in. The new president called upon the parliament to reconvene, but this order was overruled by the SCC (Supreme Constitutional Court). It was only after the 2014 Constitution entered into force that new elections (to a unicameral parliament – the People's Assembly) took place a year later.

⁴⁷ 1) The SCAF Constitutional Reform Committee (February 13, 2011) had seven members; 2) The Constitutional Assembly (which was appointed by the newly elected Parliament and dominated by Islamists) was held to be unconstitutional and was dissolved by the Supreme Constitutional Court on April 10, 2012); 3) The second 100-member constitutional assembly was elected by Parliament on June 12, 2012; 4) A 50-member Constitutional Assembly was appointed by Presidential decree on September 1, 2013.

⁴⁸ 1) The SCAF 62-article Interim Constitution /Constitutional Declaration was issued on March 30, 2011); 2) The 2012 Constitution was signed into law by Mohammad Morsi, the first democratically elected President, on December 25th, 2012; 3) The 2014 Constitution, which was approved by Acting President Adli Mansour on December 3, 2013, entered into force after the referendum on January 14-15th, 2014.

⁴⁹ 1) The 2011 referendum took place on March 19th. Approximately 77% of the Egyptian voters (18.5 million people) declared their support for the constitutional amendments proposed by SCAF; 2) The 2012 Referendum (which took place on December 15th and 22nd), which was called by President Morsi, resulted in 63.8% of Egyptian voters declaring their support for the new constitution; 3) The 2014 Referendum (which took place on January 14-15), was boycotted by Islamist supporters of Morsi. It resulted in 98.1% of voters approving the new constitution; however, voter turnout was much lower than expected, and only 38.6% of eligible voters cast a ballot.

⁵⁰ In addition to these three constitutional texts, there were a number of important constitutional declarations 1) In 2012 (June 17th) the SCAF amended the 2011 Constitutional Declaration (Interim Constitution), with a view to limiting presidential powers and clarifying SCAF's role during the transitional period; 2) In 2012 (November 22nd), President Morsi declared his decisions to be beyond judicial review until the election of a new parliament. He also extended the constitutional mandate by two months and demanded that the Constitutional Assembly not be disbanded; 3) In 2013 (July 8th) Adli Mansour, the Interim President, declared a new 33-article constitutional declaration that would apply during the transitional period.

⁵¹ It is not my concern to discuss the legitimacy of the 2013 coup in constitutional law. I similarly have no interest in engaging the question of whether a coup can be equated with revolution because of the popular manifestations that preceded it. Either engagement would be superfluous because other writers have already offered highly detailed accounts. Arafa, *supra* note 12, at 861 and 'Arafa, *supra* note 1, at 158, for instance, argues that the 2013 'coup' was not a coup but rather a 'second' or 'correcting' revolution. It should be noted that this view is very much in the minority. Most of the literature offers a more conventional reading of the coup – see Ahmed and Gouda, *supra* note 1, at 4; Mullen, *supra* note 1, at 42; Ahmed and Ginsburg, *supra* note 12; Hanna, *supra* note 1, at 67; Szmolka, *supra* note 1, at 83; 86; Amr Hamzawy, *On religion, politics and democratic legitimacy in Egypt, January, 2011-June 2013*, 40 PHILOSOPHY & SOCIAL CRITICISM 401, 404 (2014); Fadel, *supra* note 21, at 12; Ibrahim J. Gassama, *Democratic Governance in International Law after the Egyptian Coup*, 32 WISCONSIN INTERNATIONAL LAW JOURNAL 621, 621-674 (2014); Heliotis, *supra* note 1; Khan, *supra* note 1, at 76; Turner, *supra* note 1,

at 267. Some observers (Khan, *supra* note 1, at 80) go further and present the 2013 coup as a 'counterrevolution' against the Muslim Brotherhood. Others alternate between both terms and insert a question mark (coup (or second revolution?)) after the 2013 events: see, i.e. Bhuiyan, *supra* note 1, at 497; 498; 505. Others dispense with 'coup' or 'revolution' and instead opt for the 'ouster' of Mohammed Morsi' (this same word was used to describe Husni Mubarak's removal in 2011 – see Parolin, *supra* note 3, 37; 39). Liolis, *supra* note 1, also provides an enlightening discussion of the difference between 'coup' and 'revolution'.

⁵² The elections which took place between November 2011 and January 2012 resulted in a large Islamist majority of 61 percent (41 seats for the Muslim Brotherhood, and 30 for the *Salafis*). See, Awad, *supra* note 12, at 286.

⁵³ Morsi won the elections with just 51.7 percent of the votes. See, Awad, *supra* note 12, at 288.

⁵⁴ Turner, *supra* note 1, at 277.

⁵⁵ See Bammarny, *supra* note 3.

⁵⁶ See, Human Rights Watch, EGYPT: NEW CONSTITUTION MIXED ON SUPPORT OF RIGHTS: DRAFT ADOPTED WITHOUT CONSENSUS AMID POLITICAL CRISIS (Nov.30, 2012). <https://www.hrw.org/news/2012/11/30/egypt-new-constitution-mixed-support-rights> (accessed Jan.20, 2016).

⁵⁷ The role of religion (in particular the place of religion in affairs of state) proved to be a particular 'sticking point' in the constitution (Fadel, *supra* note 21, at 13; Bammarny, *supra* note 3, at 281). See Human Rights Watch, *supra* note 56, at 64. For an enlightening discussion of the relationship between religion and politics and its impact upon efforts to develop a constitutional framework for post-revolution Egypt refer to Hamzawy, *supra* note 51, at 402-403. For the impact of the new sharia related provisions in the 2012 constitution, with particular emphasis upon the role assigned to al-Azhar scholars, refer to Parolin, *supra* note 12; Brown and Revkin, *supra* note 1; Revkin, *supra* note 3.

⁵⁸ The Islamist camp enjoyed a large majority at the People's Assembly. 41% of the seats were possessed by the Muslim Brotherhood, and 20 were in the hands of the *Salafis*. See, Awad, *supra* note 12, at 286.

⁵⁹ Awad, *supra* note 12, at 286.

⁶⁰ *Id.*, at 287.

⁶¹ Abu Odeh, *supra* note 8, at 165. For further discussion of the Islamists' intention to impose the religious aspect upon the political decision-making process, along with the associated impact on the secular state, refer to Steuer and Blouët, *supra* note 17.

⁶² See Steuer and Blouët, *supra* note 17, at 250; Szmolka, *supra* note 1, at 86; Khan, *supra* note 1, at 79.

⁶³ Arafa, *supra* note 12, at 867.

⁶⁴ This left members that represented four parties, three of which were Islamist-oriented. These were: the Freedom and Justice Party (FJP), the Al-Nour Salafi party, the moderate Islamist Al-Wasat party, and the Civilization party." Ibrahim Al-Masry, *Non-Islamist members withdraw from Constitutional Assembly*, DAILY NEWS EGYPT. (Nov.24, 2012). <http://www.dailynewsegypt.com/2012/11/24/all-civilian-parties-withdraw-from-constitutional-assembly/> (accessed Jan.20, 2016).

⁶⁵ See 'Arafa, *supra* note 1, at 179.

⁶⁶ Daniela Pioppi, *Playing with Fire. The Muslim Brotherhood and the Egyptian Leviathan*, 48 (4) INTERNATIONAL SPECTATOR 51, 60 (2013).

⁶⁷ Al-Masry, *supra* note 64. For a discussion of the impact of this Presidential Decree, which focuses upon the rule of law and ensuing developments, refer to Pillay, *supra* note 3, at 150; Pioppi, *supra* note 66, at 60-63; Selim, *supra* note 1, at 190-192.

⁶⁸ See *Egyptian churches withdraw from Constituent Assembly*, EGYPT INDEPENDENT (Nov.17, 2012). <http://www.egyptindependent.com/news/egyptian-churches-withdraw-constituent-assembly> (accessed Jan.20, 2016).

⁶⁹ According to Christoph Schoenberger, in: Jacobson and Schlink, *supra* note 37, at 110.

⁷⁰ *Id.*, at 17.

⁷¹ The word “party”, which was rendered only once in the Weimar Constitution, was presented in pejorative terms: “Professional civil servants serve the whole, not a party.” Ellen Kennedy, CONSTITUTIONAL FAILURE: CARL SCHMITT IN WEIMAR 168, 133 (2004).

⁷² *See*, Jacobson and Schlink, *supra* note 37, at 17.

⁷³ The emergency powers of the president (refer to Article 48) could be traced back to the Reich constitution of 1871 and the 1850 Prussian constitution. *See* Kennedy, *supra* note 71, at 97.

⁷⁴ Jacobson and Schlink, *supra* note 37, at 11.

⁷⁵ *Id.*, at 8.

⁷⁶ *Id.*, at 113.

⁷⁷ *See Kennedy*, *supra* note 71, at 97.

⁷⁸ *Id.*, at 147.

⁷⁹ *Id.*, at 148.

⁸⁰ Caldwell, *supra* note 36, at ix.

⁸¹ *Id.*

⁸² Awad, *supra* note 12, at 286.

⁸³ *See*, Egyptian churches, *supra* note 68; Human Rights Watch, *supra* note 64. Nathan Brown was subsequently proven to be correct when he observed: “A constitution that is not a consensus document will create political problems.” Nathan J. Brown, *Still hope for Egypt’s constitution*, FOREIGN POLICY: THE MIDDLE EAST CHANNEL (Oct.1, 2012). <http://foreignpolicy.com/2012/10/01/still-hope-for-egypts-constitution/> (accessed Jan.20, 2016).

⁸⁴ The Expert Committee was appointed by presidential decree no. 489 of 2013, which was published in the Egyptian Official Journal No. 29 (bis) on 31 July 2013. It was made up mostly of judges (two from the SCC, two from the Council of the State, and two from the Cassation and Appeal courts, in addition to four law professors). *See* Mohammad Hamdi, DUSTOR JUMHORIAT MAST AL-ARABEYA 2014 [THE CONSTITUTION OF THE EGYPTIAN REPUBLIC 2014], 66-67 (2014). The Constitutional Committee instead included 50 members. For a full list of the members of the 50 Members Constitutional Committee, and their background, see: The 50 members Committee: Who is Who, EGYPTIAN CHRONICALS (Sep.2, 2013). <http://egyptianchronicals.blogspot.com/2013/09/the-50-members-committee-who-is-who.html> (accessed Jan.21, 2016). The Presidential Decree No. 570 of 2013 (issued on September 1, 2013 by the Interim President, Adli Mansour), was published in Egyptian Official Journal, No. 35bis of September 1, 2013. Available in: Hamdi, *supra*, at 69.

⁸⁵ *See* Maggie Michael, *Egypt Bans Muslim Brotherhood*, HUFFINGTON POST (Nov.23, 2013). http://www.huffingtonpost.com/2013/09/23/egypt-bans-muslim-brotherhoodn_3974979.html. (accessed Jan.21, 2016); David D. Kirkpatrick, *Egyptian Court Shuts Down the Muslim Brotherhood and Seizes Its Assets*, NEW YORK TIMES (Sep.23, 2013). <http://www.nytimes.com/2013/09/24/world/middleeast/egyptian-court-bans-muslim-brotherhood.html> (accessed Jan.21, 2016).

⁸⁶ Arafa, *supra* note 12, at 893. This is according to Article 74 of the 2014 Constitution, which was newly introduced. Article 6 of the 2012 Constitution did not contain a similar provision. For a more extensive comparison of the two constitutional texts, see Mariam Rizk and Osman El Sharnoubi, *Egypt’s constitution 2013 vs. 2012: A comparison*, AHARAMONLINE (Dec.12, 2013). <http://english.ahram.org.eg/News/88644.aspx> (accessed Jan.21, 2016).

⁸⁷ *See* The 50 members Committee, *supra* note 85.

⁸⁸ See, e.g., Arab Center for Research & Policy Studies, *Egypt: A Comparison between the 2012 and 2014 Constitutions*, (Jan.27, 2014). <http://english.dohainstitute.org/home/print/5ea4b31b-155d-4a9f-8f4d-a5b428135cd5/77756cec-a26f-4bfb-8b6a-2f42fa8d23bd> (accessed Jan.22, 2016).

⁸⁹ See Rizk and El Sharnoubi, *supra* note 86; Sarah El Masri, *Egypt's new constitution: A comparative overview*, DAILY NEW EGYPT (Dec.8, 2013). <http://www.dailynewsegypt.com/2013/12/08/egypts-new-constitution-a-comparative-overview/> (accessed Jan.22, 2016); Arab Center, *supra* note 88; Al-Jazeera, *COMPARING EGYPT'S 2012 AND 2013 CONSTITUTIONS*, (Jan.14, 2014). <http://www.aljazeera.com/news/middleeast/2014/01/comparing-egypt-2012-2013-constitutions-20141144363151347.html> (accessed Jan.22, 2016).

⁹⁰ See *Carnegie Endowment*, *COMPARING EGYPT'S CONSTITUTIONS* (n.d.) <http://carnegieendowment.org/files/Comparing-Egypt-s-Constitutions.pdf> (accessed Jan.22, 2016).

⁹¹ 2014 Constitution (art.4); 2012 Constitution (art.5); 1971 Constitution (art.3).

⁹² 2014 Constitution (art.2); 2012 Constitution (art.2).

⁹³ This was particularly apparent with regard to the delimitation of the Presidential term (to four years), the restriction of re-election (only one reelection) (2014 Constitution (art.140); 2012 Constitution (art.133)), the regulation of the approval of the military budget (2014 Constitution (art.203); 2012 Constitution (art.197)), the delimitation of the circumstances in which civilians can be required to appear before a military court and the constitutional recognition of minority groups (2014 Constitution (art.204); 2012 Constitution (art.198)); Egyptian Christian and Jewish communities and their independence on matters pertaining to personal affairs and spiritual issues (2014 Constitution (art.3); 2012 Constitution (art.3)).

⁹⁴ Article 2 of the 1971 Constitution was also present in the 2012 and 2014 Constitutions.

⁹⁵ Article 129 of the 2012 Constitution therefore established that: "The principles of Islamic Sharia include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community." This article was deleted from the 2014 Constitution. The preamble of this document instead referred to the role of the SCC in interpreting the content of the principles of Islamic Shari'a, with a view to ensuring their application under Article 2.

⁹⁶ 2012 Constitution (art.4): "Al-Azhar's senior scholars are to be consulted in matters pertaining to Islamic Shari'a."

⁹⁷ For a thorough discussion of the case, its context and impact upon the Egyptian constitutional system, see Parolin, *supra* note 12.

⁹⁸ After deleting the two amendments introduced in the 2012 constitution, the preamble of the 2014 constitution explicitly refers to the understanding that the principles of Islamic Sharia that are referenced in the constitution are consistent with the SCC's interpretation. Accordingly, it was maintained that: "We are drafting a constitution that affirms that the principles of Islamic Sharia are the principle source of legislation, and that the reference for interpretation thereof is the relevant texts in the collected rulings of the Supreme Constitutional Court."

⁹⁹ 2014 Constitution (art.74).

¹⁰⁰ 2014 Constitution (art.117); 2012 Constitution (art.97).

¹⁰¹ See newly introduced article 161 of the 2014 Constitution. The 2012 Constitution did not make a similar concession to the Parliament. For further insight, see Rizk and El Sharnoubi, *supra* note 86.

¹⁰² For further insight, compare Article 159 of the 2014 Constitution to Article 152 of the 2012 Constitution. For more, Rizk and El Sharnoubi, *supra* note 86.

¹⁰³ This is a new amendment in the 2014 Constitution (article 154), as the 2012 Constitution did not contain a comparable option. (art.148).

¹⁰⁴ The maximum emergency time is three months, and this can only be extended to a further three months. This clearly contrasts with the 2012 Constitution, which had made provision for six months in the first instance and six months in the second.

¹⁰⁵ 2014 Constitution (art.137); 2012 Constitution (art.127).

¹⁰⁶ 2014 Constitution (art.136); 2012 Constitution (art.139).

¹⁰⁷ 2014 Constitution (art.201); 2012 Constitution (art.195).

¹⁰⁸ Article 234 of the 2014 Constitution establishes that this should remain in force for two full presidential terms.

¹⁰⁹ 2014 Constitution (art.203).

¹¹⁰ 2014 Constitution (art.102); 2012 Constitution (art.114). For further insight, refer to El Masri, *supra* note 89; Arab Center, *supra* note 88. This establishes that 28 deputies were appointed and 568 deputies were elected - the total number of seats in the new Egyptian Parliament is 596. *See Constitutional law professor Abdel-Al named Egypt's parliament speaker*, AHRAMONLINE (Jan.10, 2016). <http://english.ahram.org.eg/NewsContentPrint/1/0/180543/Egypt/o/UPDATE--Egypt%E2%80%99s-parliament-swears-in,-starts-votin.aspx> (accessed Jan.27, 2016).

¹¹¹ 2014 Constitution (art.123). See, El Masri, *supra* note 89.

¹¹² 2014 Constitution (art.193).

¹¹³ 2014 Constitution (art.176).

¹¹⁴ 2014 Constitution (art.185); 2012 Constitution (art.169). See, El Masri, *supra* note 89.

¹¹⁵ 2014 Constitution (art.189); 2012 Constitution (art.173).

¹¹⁶ 2014 Constitution (art.207).

¹¹⁷ *See Al-Jazeera, supra* note 90.

¹¹⁸ 2014 Constitution (art.237).

¹¹⁹ 2014 Constitution (art.93).

¹²⁰ 2014 Constitution (art.11); 2012 Constitution (art.10).

¹²¹ 2014 Constitution (art.53). See, Rizk and El Sharnoubi, *supra* note 86.

¹²² 2014 Constitution (art.52;55).

¹²³ 2014 Constitution (art.89).

¹²⁴ 2014 Constitution (art.71).

¹²⁵ 2014 Constitution (art.69).

¹²⁶ El Masri, *supra* note 89.

¹²⁷ 2014 Constitution (art.64); 2012 Constitution (art.43). See, El Masri, *supra* note 89.

¹²⁸ *See Al-Jazeera, supra* note 90.

¹²⁹ 2014 Constitution (art.63).

¹³⁰ This is based on the 2014 Constitution (art.243). In contrast, the 2012 Constitution (art.229) established that half of the seats would be reserved for them.

¹³¹ 2014 Constitution (art.12).

¹³² Jacobson and Schlink, *supra* note 37, at 10.

¹³³ Maurice Duverger, Arend Lijphart, & Gianfranco Pasquino, *A New Political System*, 31 EUR. J. POL. RES. 125, 127 (1997).

¹³⁴ See, Shen, *supra* note 32, at 38.

¹³⁵ See Jacobson and Schlink, *supra* note 37, at 8.

¹³⁶ *Id.*

¹³⁷ Refer to the texts that accompany *supra* notes 21-24.

¹³⁸ Zaid Al-Ali and Nathan Brown, *Egypt's constitution swings into action*, FOREIGN POLICY (Mar.27, 2013). <http://foreignpolicy.com/2013/03/27/egyptsconstitutionswingsintoaction/>.

¹³⁹ SEMI-PRESIDENTIALISM, *supra* note 20, at 62.

¹⁴⁰ The President had the right to subject Reichstag decisions to popular plebiscite. See Jacobson and Schlink, *supra* note 37, at 11.

¹⁴¹ Jacobson and Schlink, *supra* note 37, at 11.

¹⁴² *Id.*, at 8. The court pretended to have a constitutional review power that extended beyond any constitutional mandate. In the view of some scholars, this clearly contradicted the president's ascribed role as guardian of the constitution.

¹⁴³ Jacobson and Schlink, *supra* note 37, at 10.

¹⁴⁴ He also appointed the Reich officials and officers. *Id.*

¹⁴⁵ *Id.*, 10-11.

¹⁴⁶ 2014 Constitution (art.88); 2012 Constitution (art.56).

¹⁴⁷ 2014 Constitution (art.87); 2012 Constitution (art.55).

¹⁴⁸ 2014 Constitution (art.226); 2012 Constitution (art.217;218).

¹⁴⁹ 2014 Constitution (art.151). There was no need in the 2012 Constitution to organize a referendum for those treaties but only to obtain a two third majority of the two house of the Parliament (art.145).

¹⁵⁰ 2014 Constitution (art.137); 2012 Constitution (art.127).

¹⁵¹ 2014 Constitution (art.161). A new article compared to the 2012 Constitution which – rightly so – limited the right to withdraw confidence to the Prime Minister or a specific minister (art.126).

¹⁵² The only time when the Prime Minister is explicitly entitled to call for a referendum is when he/she is preoccupied with a decision to withdraw confidence from the president. It should be noted that the Constitution does not explicitly clarify who can call for referendums, with a view to ratifying treaties or approving constitutional amendments. However, it is widely assumed that the President will take responsibility in both instances.

¹⁵³ 2014 Constitution (art.157); 2012 Constitution (art.150).

¹⁵⁴ 2012 Constitution (art.150).

¹⁵⁵ "Sovereignty belongs to the people alone, which exercises it and protects it. They are the source of power." 2014 Constitution (art.4); 2012 Constitution (art.5).

¹⁵⁶ 2014 Constitution (art.1); 2012 Constitution (art.1).

¹⁵⁷ 2014 Constitution (art.154). It will be noted that art.148 of the 2012 Constitution initially established that a referendum would be required to approve an extension of the state of emergency.

¹⁵⁸ 2014 Constitution (art.152); 2012 Constitution (art.146). The Minister of Defense is instead the Commander in Chief of the Armed Forces. 2014 Constitution (art.201); 2012 Constitution (art.195).

¹⁵⁹ 2014 Constitution (art.156); 2012 Constitution (art.131).

¹⁶⁰ Mai El-Sadany, *Tracking Egypt's Extraparliamentary Laws*, THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY (Aug.12, 2015). <http://timep.org/commentary/tracking-egypts-extraparliamentary-laws/#authorbio> (accessed Jan.27, 2016).

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- ¹⁶¹ *Id.* For further insight into this legislation, visit: <http://timep.org/legislationtracker/> (accessed Jan.27, 2016)
- ¹⁶² *See*, The Tahrir Institute for Middle East Policy, LEGISLATION TRACKER REPORT (January 2016). <http://timep.org/wp-content/uploads/2016/01/Legislation-Tracker-Report.pdf> (accessed Jan.27, 2016).
- ¹⁶³ Mai El-Sadany, *The Egyptian Parliament's First Task*, THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY (Jan.9, 2016). <http://timep.org/commentary/the-egyptian-parliaments-first-task/> (accessed 01 27, 2016).
- ¹⁶⁴ *See* Constitutional law professor, *supra* note 110.
- ¹⁶⁵ Weimar Germany's electoral system adopted the principle of proportional voting, which operated upon the basis of general suffrage (this extended to women). *See* Jacobson and Schlink, *supra* note 37, at 10.
- ¹⁶⁶ Based on article 53 of the Weimar Constitution. *Id.*, at 10-11.
- ¹⁶⁷ The chancellor and ministers required the confidence of the Reichstag – refer to Article 54 of the Weimar Constitution. *Id.*, at 10.
- ¹⁶⁸ *Id.*
- ¹⁶⁹ The Reichstrat, in which Länder were represented in the Reich (it replaced the imperial Bundesrat), was not a centralized institution – to this extent, its “members were emissaries of the Land governments, bound to obey their instructions.” *Id.*
- ¹⁷⁰ This regime existed in France before 1914. *See*, Shen, *supra* note 32, at 37-38.
- ¹⁷¹ *See* Jacobson and Schlink, *supra* note 37, at 10.
- ¹⁷² *See* Skach, *supra* note 31, at 98.
- ¹⁷³ It could indeed be argued, taking the philosophy of the Weimar Constitution into account, that the president was supposed to perform the role of a “reserved political leader in reserve, when political quarrels and crises paralyzed the parliamentary track of governing”. *See* Shen, *supra* note 32, at 37.
- ¹⁷⁴ *Id.*, at 38.
- ¹⁷⁵ Article 50 of the Weimar constitution established that the acts of the president have to be signed by the chancellor and his ministers to become legally binding. *Id.*
- ¹⁷⁶ *See*, Shen, *supra* note 32, at 39.
- ¹⁷⁷ Skach has previously argued that technocratic governments are but a symptom of what she calls “constitutional dictatorship”. Skach, *supra* note 31, at 99.
- ¹⁷⁸ Cindy Skach, in citing her own previous work, defines constitutional dictatorship in the following terms: “Constitutional dictatorship describes a situation in which executives make extended use of emergency and decree powers to legislate in hard times.” *Id.*, at 100.
- ¹⁷⁹ The president could dissolve the Reichstag “only once, however, for the same reason and with the proviso that new elections be held within sixty days at the latest.” Jacobson and Schlink, *supra* note 37, at 11.
- ¹⁸⁰ In Weimar Germany, “the legislature may have the power to revoke constitutional dictatorship by vetoing executive decrees.” Skach, *supra* note 31, at 99-100. Even these constitutional dynamics didn't function in practice in a divided minority government. Accordingly: “Constitutionally, a majority in the Reichstag could have questioned these decrees, but deputies resisted in order to avoid legislative dissolution.” Skach, *supra* note 31, at 115.
- ¹⁸¹ *Id.*, at 100-103.
- ¹⁸² *Id.*, at 103. In France, they reduced the term of the President to five years. Provision was also made for greater overlap between elections of the Presidency and the National Assembly, with a view to avoiding complications that might arise from great gaps in popular mood.
- ¹⁸³ *See* Jacobson and Schlink, *supra* note 37, at 11.

¹⁸⁴ *Id.*, at 103.

¹⁸⁵ See Skach, *supra* note 31, at 115.

¹⁸⁶ See Jacobson and Schlink, *supra* note 37, at 10-11.

¹⁸⁷ *Id.*

¹⁸⁸ The countersignature was imposed in many semi-presidential regimes (including the Weimar and French Republics), having been conceived as “[a]n effective mechanism [that would] preserve power sharing and limit the excessive use of decree powers”. SEMI-PRESIDENTIALISM, *supra* note 20, at 13.

¹⁸⁹ Al-Ali and Brown, *supra* note 141.

¹⁹⁰ SEMI-PRESIDENTIALISM, *supra* note 20, at 101.

¹⁹¹ The new Egyptian Parliament is composed of 448 independents, 120 party-based deputies and 28 presidential appointees. See Constitutional law professor, *supra* note 114.

¹⁹² See Jonathan Eyal, *Finding the right balance of power - Failure to share power in today's semi-presidential political systems often results in coups and turmoil*, STRAITS TIMES (SINGAPORE) (July 22, 2013).

¹⁹³ See SEMI-PRESIDENTIALISM, *supra* note 20, at 9.

¹⁹⁴ *Id.*, at 23.

¹⁹⁵ See Eyal, *supra* note 192.

¹⁹⁶ *Id.*

¹⁹⁷ See SEMI-PRESIDENTIALISM, *supra* note 20, at 62.

¹⁹⁸ See SEMI-PRESIDENTIALISM, *supra* note 20, at 23.