

Arab-West Report Paper 2, August 2007

Title: Arguments, Alternatives and Amendments: Article two of the Egyptian Constitution

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1. Introduction

Article two of the Egyptian Constitution has been a cause of great debate and speculation both within Egypt and abroad. Moreover, it has divided opinions across religious, secular and political lines.

This paper will analyze the discussions about article two of the Egyptian Constitution since 1997 and will focus on the debate that took place in the Egyptian media after the constitutional amendments were proposed in December 2006.

The paper will start with a short introduction to article two, before going on to introduce the key players in the discussion and the sorts of arguments which have been presented. The main body of the paper will then focus on the debate which took place as part of the discussion about the constitutional amendments, highlighting the differences and similarities in the arguments that were made and also outlining the political and religious background of the people involved. Three principal trends will thus emerge from this analysis: one calling for the omission of article two, the second favoring an amendment and the third advocating the status quo.

The material used to study the debate over article two has been gathered from the archives of Arab media from *Arab-West-Report* [AWR] and its predecessor *Religious News service from the Arab World* [RNSAW] since 1997.¹

2. Methodology²

During the research that was carried out for this paper all articles translated and written for *RNSAW/AWR* since 1997 were searched for discussions and comments on article two of the Egyptian Constitution. The results, which include a summary of the specific statement, the name and background of the person making the statement, the *AWR* issue and article number as well as the original publication, were collected in an Excel-sheet and categorized into the three groups mentioned in the introduction [omission or opposition to referring to *Sharī'ah* in the Egyptian Constitution, amendment or seeking a compromise between opponents to the reference to the inclusions of the current reference to *Sharī'ah* in the Constitution and those who want to keep the reference as it is, preserving or advocating that changing article two would

¹ Media covered by RNSAW/AWR: *Al-Ahrām*, *al-Akhhbār*, *al-Jumhūrīyah*, *al-Wafd*, *al-Ahrār*, *al-Hayāt*, *al-Sharq al-Awsat*, *al-°Arabī*, *al-Ahālī*, *°Aqīdatī*, *al-Liwā' al-Islāmī*, *al-Liwā' al-°Arabī*, *Sawt al-Azhar*, *Sawt al-Umma*, *al-Usbū°*, *al-Qāhirah*, *al-Maydān*, *Watanī*, *Rose al-Yūsuf*, *October*, *al-Musawwar*, *Ākhir Sā°ah*, *Sabāh al-Khayr*, *al-Ahrām al-°Arabī*, *al-Misrī al-Yawm*, *al-Dustūr*, *Cairo Times*, *al-Fajr*.

² T .Prentice's paper entitled 'Article 2 of the Egyptian Constitution' was consulted during the research for this section.

be detrimental]. Further excel-sheets were created, showing the number and religious background of the participants in the discussions as well as the number of different arguments and articles before and during the debate on the constitutional amendments. It was based on this quantitative knowledge that this paper was written.

3. Article two: its reading and history

On May 22 1980, President Anwar al-Sādāt changed the indefinite article "a" in Art. 2 of the Egyptian Constitution into a definite "the", thereby promoting *Sharī'ah* as the chief source of legislation.³ Art. 2 of the Egyptian Constitution now states:

*Islam is the religion of the state and Arabic its official language. Principles of Islamic law [Sharī'ah] are the principal source of legislation.*⁴

The previous version of the text was also introduced by al-Sādāt in 1971 to gain the support of the Islamist groups, primarily the Muslim Brotherhood, for his political and economic reform agenda in the post-Nāsir-era. Making *Sharī'ah* the main source of legislation was the outcome of discussions between the government and Islamic institutions about how Egypt's legislation could be in line with the majority of its inhabitants' religion. In the 19th century, under western influence, the country abandoned religion for the sake of secularism but the new changes under al-Sādāt symbolized a return to *Sharī'ah* as the guideline for ruling, as it has been in previous centuries⁵. Although it seems that al-Sādāt did this to ensure that his reforms went ahead, for most Egyptian people who ratified this amendment as well as the politically engaged Islamic groups, the wording of the article expressed their view on the role that *Sharī'ah* should play.

It is important to note that the court responsible for the interpretation of art. 2, the Supreme Constitutional Court [SCC] has been following a liberal interpretation of *Sharī'ah*.

4. Article 2 in the discussion before the constitutional amendments

Prior to the proposed constitutional amendments in 2006 there was no major discussion about art. 2 in the period covered by *Arab-West-Report*⁶, however this does not mean that it was forgotten. In fact, every now and then somebody would comment on the wording of the article. By giving an overview of the people and statements made during that time it is possible to see that many of them will appear again in the most recent discussion, thereby illustrating that the worries of possible abuse, resulting in discrimination of non-Muslims, neither changed nor died away. Likewise, the arguments used for the defense and explanation of article two as well as the efforts to appease the above mentioned fears rely on the same arguments which were used in recent times.

In 1999, in an interview, Idwar Ghalī al-Dahabī, a Coptic writer, who was the former chief of the State Cases Authority [hai'it Qadaya el-Dawla], an authority on the study

³ Prentice, T, Article Two of the Egyptian Constitution, p. 16

⁴ <http://constitution.sis.gov.eg/en/2.htm>

⁵ Ibid p. 8f.

⁶ Arab-West-Report started its media coverage in 1997.

of the rights of non-Muslims in an Islamic society, and a former member of the People's Assembly stated that he does not oppose *Sharī'ah* as it does not deprive Christians of their rights.⁷ However, it is difficult to tell whether his statement represents his personal view or whether it actually represents the official government stance, as he is known to be close to the government. It is also interesting to note that he expressed his view at a time when there was no public discussion about the matter.

In January 2002, Nabīl Luqā Bibāwī, a Coptic author and the vice-chairman of the *Shūrā* Council Information and Culture Committee voiced his opinion about the second article of the Egyptian Constitution in his book entitled 'The problems of Copts in Egypt and their solutions.' He points out that the problem does not lie in the article itself but in Copts' fear that Islamic law may be applied to them. In countering this anxiety Bibāwī cites the Islamic principle of freedom of belief: "There is no compulsion in religion, both the true and the untrue become clear". As most Egyptians are Muslims, he finds it normal that Islam is mentioned as the religion of the state and in that respect Egypt does not differ from other Arab states which also label the religion of the majority [Islam in these cases] as the official state religion. Thus he states that calls for the abolishment of article two are "evil", and seek to embarrass the Egyptian government on the international stage.⁸

It is interesting to note that both writers are prominent Copts advocating the maintenance of article two and stressing the tolerant interpretation of *Sharī'ah* by the SCC toward the other heavenly religions. At the same time it has to be taken into account that both of them are known for their pro-government stances and not for arguing from the basis of their religious identity. Thus, it can be assumed that their stance is due to their political and not their religious affiliation. Still, the political situation must be taken into account: Islamists are gaining more and more support and an openly and dramatically expressed opposition to *Sharī'ah*, which many would understand – deliberately or out of a lack of knowledge – as an assault on Islam itself, would incite an aggressive and emotionally loaded response.

The next statement in *Arab-West-Report* concerning article two is found in May 2005 and was made by Kamāl Zākhir Mūsá, a well-known Coptic intellectual and active layman in the Church, who re-introduces the term "citizenship" into the debate, which he defines as "duties and rights [that] should emanate directly from affiliation to the nation".⁹ He contrasts this to the wording of article two, arguing that it does not go beyond religious affiliation and asks for a clear definition of Egypt's nature; whether it is a civil or a religious state. However, later in the debate over constitutional amendments Mūsá changes his point of view.

In a symposium that was held at the Ibn al-Khaldūn center in June 2005 ʿUthmān Muhammad ʿAlī, the leader of the Qur'ānists¹⁰ Organization called for the abolishment of article 2 because it does not guarantee security for Egypt's religious minorities.¹¹ The fact that he pronounced his view in a public discussion shows that despite the

⁷ AWR 3/1999, art. 11.

⁸ AWR 52/2001, art. 4.

⁹ AWR 22/005, art. 5

¹⁰ The Qur'ānists only follow the Qur'ān, arguing that it is more historical than the sunnah (<http://koranist.org/pillars.html>).

¹¹ AWR 24/2005, art. 12

limited coverage of the topic, which may be due to the social and political climate, an examination of it still took place, although admittedly it was behind closed doors.

In September 2005 Ahmad al-Jammāl, an author who frequently writes about Coptic issues, provided an overview of the development and effectuation of article two, in which he pointed out that "these are delicate times in which to discuss issues relating to religious laws and their role in Egyptian law and society"¹², thus re-affirming the tense atmosphere surrounding this topic. He came to the conclusion that secularism does not necessarily advocate the denial of religion, but that a specific creed should not be the basis for laws and the constitution.¹³ In the same month, Mamdūh Nakhlah, the co-founder of Hizb al-Ummah al-Misrīya [the Egyptian Nation Party, formerly known Hizb Misr al-Qibtī, Egypt's Coptic Party], a party which has a mainly Coptic membership, stated in a press interview that the party's program does not call for an abolishment of article two, but calls for an amendment which makes *Sharī'ah* one of the sources of legislation, with positive law being the major source.¹⁴ While the latter part of the argument introduces a new point, the first half of the statement seems rather redundant as *Sharī'ah* already is the main source but not the only one.

Contrary to these two views, the author °Abd al-Ghanī defended the existence of article two in its present form, using opinion polls that were carried out to back up his arguments. However these opinion polls date back to 1985 and therefore should be considered with caution. He also cites the well-known Copt Rafiq Habīb who defends the article. In addition, he divides advocates and opponents of article two into two different political groups, the former are in favor of a national project while the latter has given in to Zionist pressure.¹⁵ This is a very crude division which should be seriously doubted, but it is useful indicator of some of the political arguments used to exert pressure and to present people with other opinions in an unfavorable light.¹⁶

In October 2005, two Islamists declared their opinions publicly. Both are in favor of the article, but use a different rationale to reach the same conclusion. Tharwat al-Kharbāwī, a lawyer and prominent Brotherhood member as well as the leader of the Mukhtar Nūh's wing in the Bar Association, which propagates the views of the Brotherhood, argues that Christianity does not provide a legal system, leaving them in need of such a system, which could be the Islamic *Sharī'ah*. Even if things forbidden by Islamic law are allowed in Christianity, not doing or practicing these does not turn a Christian into a sinner as long as he is not compelled to do them. In this context, he mentions drinking alcohol as an example.¹⁷ His interpretation is thus very restrictive as it limits the religious freedom of Christians to what they are obliged to do and it does not extend to what they are allowed to do when it contradicts *Sharī'ah*. Furthermore, there are those who argue that Islamic law is composed of two sections: Muslim religious duties toward God, thus only applicable for followers of the Islamic creed and rules concerning society and its members, valid for both non-Muslims and Muslims.¹⁸ Muntasir al-Zayyāt, a lawyer for the outlawed al-Jamā'ah al-Islāmīyah

¹² AWR 38/2005, art. 20

¹³ Ibid.

¹⁴ AWR 39/2005, art. 26.

¹⁵ AWR 41/2005, art. 9.

¹⁶ In Egypt, calling somebody a Zionist, an American or a Jew serves exactly that purpose and is quite commonly used.

¹⁷ AWR 43/2005, art. 9.

¹⁸ Compare Idwar Ghalī al-Dahabī, AWR 3/1999, art. 11.

denies that Egypt is a multi-religious country as 90 percent of its population adheres to Islam and *Sharī'ah* and would never accept the separation of religion and every day life. He asserts that Christians enjoy the same rights and have to fulfill the same duties as their Muslim counterparts. He also compares the religious freedom of Christians in the Muslim and Arab world to the religious freedom of Muslims in the West, stating that while church bells can be heard in all Islamic-Arab countries¹⁹, Muslims in the West are not allowed to broadcast the call to prayer loudly.²⁰ As with °Abd al-Ghanī, arguments linked to the international political debate are employed in an internal matter, this time to discredit the West that constantly calls for an end to discrimination against minorities in the Arab world while at the same time apparently does not practice what it preaches.

At the end of 2005, a heated discussion about article two focused on a much criticized paper by Yustina Saleh, a U.S.-based researcher of Egyptian origin, which stated that article two impeded religious freedom.²¹ *AWR* asked well-known Egyptian scholars to reply, issuing a questionnaire about article two and related topics, but received little feedback²².

In February 2006 a symposium that was hosted by the Egyptian Organization for Human Rights was held, where Muslim Brotherhood Members and Copts discussed the future of Islamic *Sharī'ah*.²³ This is yet another indication that the topic was being discussed in the public sphere. Dr. °Isām al-°Iryān, a prominent leader of the Muslim Brotherhood announced his support for article two, explaining that his organization strives for a state which includes religious freedom for all religions and also incorporates *Sharī'ah*. In addition, he elaborated that Islamic law does not affect Coptic religious issues. He strongly attacked secularism, holding it responsible for all the human catastrophes that occurred in the 20th century.²⁴ This argument is used quite frequently by defenders of article two, as will be seen in the analysis of the 2006/07 discussion. However, Father Marqus °Azīz, from the Hanging Church in Cairo, objected to Dr. °Iryān's views and complained about Christians' situation, claiming that they have to "pray in a whisper".²⁵ He did not explicitly link this statement to article two but as he expressed his view that Muslims regard Christians as unbelievers, it can be assumed that he either fears or opposes the application of Islamic law. Father Marqus °Azīz also took part in the more recent discussion, and contradicted Pope Shenouda's stated public opinion.

°Ādil Jundī, an expatriate Coptic activist, goes further than Father Marqus °Azīz and in his article in *Watanī* on March 12, 2006 called for the abolishment of article two, based on the argument that the "insertion of religion into politics" is harmful for both sides. In his view the bases of a modern state, i.e. equality and freedom, are sufficient

¹⁹ This statement has to be seriously doubted as it is certainly not true for Saudi Arabia and several Gulf states. However, it applies to Islamic countries where Christianity predates the arrival of Islam.

²⁰ *AWR* 43/2005, art. 46.

²¹ cf. paper Trish Prentice, chapter 4.

²² This issue is dealt with in detail in *AWR* 2005, wk 51 and does not center on a specific Egyptian social or political figure

²³ *AWR* 09/2006, art. 22.

²⁴ *Ibid.*

²⁵ *Ibid.* It has to be noted that this statement is an indirect reference to the fact that some Islamic groups tend to build mosques at the side of churches or monasteries which denies Christians the silence they want to pray in. One example of that is the Monastery of Muharraq.

as sources of legislation.²⁶ Additionally, he explores the literal meaning of the article, noting that *Sharī'ah* does not only contain regulations from *Qur'ān* and *sunnah* but also from Islamic jurisprudence which was constructed by humans and therefore prone to mistakes²⁷ which again reduces its eligibility as source of legislation.

Closer to a debate than mere statements is the contribution of Mamdūh Halīm, a Coptic author and researcher, in *Watanī* on May 14, 2006 in response to Silīm al-[°]Awā, an Islamist intellectual, who gave an interview on al-Jazīrah news channel, denying that there is discrimination against Copts in Egypt and criticizing calls for the amendment or abolishment of article two. In this interview, al-[°]Awā also attacked the Coptic thinker Mīlād Hannā for his rejection of *Sharī'ah* being the main source of legislation. Halīm argues that every state has to be civil, which means that it is based on citizenship and that article two violates citizenship. He does not explain this assertion any further but it is quite likely that he would follow Kamāl Zākhir Mūsā's arguments, which were explained above. The idea and term 'citizenship' thus becomes very important in the amendments discussion because it was to be included in the Egyptian Constitution.

Another discussion was initiated at the beginning of July 2006 after the Fourth International Coptic Conference which was held in New Jersey, U.S, called for the abolishment of article two. In response Amīn Iskandar, a Coptic intellectual and political analyst stated that the article is "logical" because the majority of Egyptian people are Muslim. Copts do not need to be afraid of this article, nor are they in any way oppressed because of it.²⁸ Rafīq Habīb, another Coptic intellectual, explained that the problems Copts face in Egypt are not due to the Constitution but are imbedded in the political structure and the social circumstances, which in his point of view, are not linked to religious identity. He also reproaches expatriate Copts for voicing their opinions in a provocative manner, asking who gave them the right to speak on behalf of the Copts living in Egypt.²⁹ Idwar Ghālī al-Dahabī shares this point of view, accusing the expatriates of serving Egypt's enemies by sowing the seeds of sedition and again expresses his opinion that all Egyptians are equal under the law and the Constitution and that non-Muslims can rule according to their own creed in many aspects.³⁰ These differences in opinion between expatriate Copts and Copts in Egypt will become more evident as the debate progresses. In any case, this difference stems from their different circumstances: Copts living outside Egypt are not directly confronted with the reactions – be they peaceful or violent – to their opinions, whereas Copts in Egypt have to take into account the religious feelings and tense atmosphere when it comes to this matter.

To conclude, it can be said that the article two issue continued to linger at the back of people's minds. Discussions about it mainly involved intellectuals, both Muslims and Christians, most of whom reject any change or abolishment of article two, trying to calm, primarily Coptic, fears of discrimination that stem from this article. However, there were different motivations behind this opinion: while most Copts do not want to provoke tensions, Muslims tend to argue out of purely religious feelings. People who

²⁶ AWR 12/2006, art. 60.

²⁷ AWR 12/2006, art. 60.

²⁸ AWR 28/2006, art. 41.

²⁹ Ibid.

³⁰ AWR 28/2006, art. 41.

oppose *Sharī'ah* being the main source of legislation often resort to the principles of citizenship and a civil state, arguing that religious affiliation to a state contradicts these ideas.

5. Article two and the constitutional amendments

This section will explore the discussion about article two in 2006/2007 which was triggered by the constitutional amendments that were proposed by President Mubārak on December 26, 2006 in a letter to the People's Assembly.³¹ This section will start by explaining why the second article was discussed so much even though there was no amendment proposed. Following this, the different groups and arguments will be analyzed.

5.1 Why article two?

The constitutional amendments included a change in the first article of the constitution from:

*The Arab Republic of Egypt is a democratic, socialist state based on the alliance of the working forces of the people. The people are part of the Arab Nation and work for the realization of its comprehensive unity.*³²

to:

*The Arab Republic of Egypt is a democratic state based on citizenship. The Egyptian people are part of the Arab Nation and work for the realization of its comprehensive unity.*³³

The major difference is the introduction of the term "citizenship" which by definition means; the state of being a member of a particular country and having rights because of it³⁴. But as the second article states that Islam is the religion of the state and the principles of *Sharī'ah* are the main source of legislation, many critics argue that this article reduces the citizen's affiliation to the state to religious belief whereas citizenship has a much broader and more neutral implication. Thus, these critics state that there is a contradiction between the amended first article, or more specifically the term citizenship, and the wording of the second article, which emphasizes the role of Islam and *Sharī'ah*. This in turn led to a heated discussion about the second article in the course of which many of the previously mentioned reasons and fears re-appeared.

5.2 Groups and arguments

The participants in the discussion can be roughly organized into three groups: the first call for the complete omission of article two, the second is prepared to keep it under certain circumstances, be it under the condition of amending article two itself or adding an extra paragraph to another article which would specify or restrict the application of the second article. The third group wants to maintain the status quo.

³¹www.constitution.sis.gov.eg/en/11d.htm.

³²<http://constitution.sis.gov.eg/en/ecard03.pdf>.

³³<http://constitution.sis.gov.eg/en/ecard03.pdf>.

³⁴ Cambridge Advanced Learner's Dictionary.

5.2.1 Omission

This group is mainly composed of Christians from all denominations, and Muslims who argue from a secular perspective. Most of the Copts, though, are emigrants and use very sharp, uncompromising arguments and are therefore dealt with in a special section.

5.2.1.1 Muslim and Christians inside Egypt

The range of the arguments is quite broad and can even include those who oppose article two without further elaborating on the reasons. An example of this group is Dr. Jābir ʿAsfūr, the Secretary General of the Supreme Council of Culture.³⁵ A more complex argument is presented by Rifʿat Fikrī, a pastor of the Evangelical Church in 'Ard Sharīf, Shubrā, who holds that article two divides the Egyptian nation into believers and non-believers. Furthermore the existence of Islam as the official state religion symbolizes a violation of the rights of the Egyptian non-Muslims and contradicts claims that Egypt is an institutional state.³⁶ Sāmī Harak, the founder of Misr al-Umm party, advocates a similar stance, asking how a moral entity like a state can possess a particular religion. In addition he adds that art. 2 harms religion as it "contradicts logic and reduces the spiritual effect of [it]"³⁷.

Developing these arguments that focus on the civil and neutral nature of the state, Christians especially harbor fears that article two will facilitate the establishment of a religious state. Muhsin Munīr, an Evangelical pastor, argues that article two not only breaches the equality between Muslims and Christians but also serves as a gateway to an Islamic religious state.³⁸ A similar opinion is voiced by William al-Mayrī³⁹ whereas Muhammad ʿAbd al-Nabī refers to the fanaticism that already exists in society from his point of view, saying that article two created a problem which Egypt is now trying to solve. He mentions the assassination of al-Sādāt and the court ordered divorce of the writer Nasr Abū Zayd as examples.⁴⁰

Two other voices that called for the abolishment of article two belong to ʿAbd al-Mun'im Saʿīd, the head of the al-Ahram Institute for Strategic Studies and Yūsuf Sidhom, a Coptic intellectual and editor-in-chief of the periodical *Watanī*. But whereas the first supports a revision of article two after the implementation of the proposed amendments to check if it is in accordance with them, either leading to its omission or amendment,⁴¹ the latter favors its abolishment as he strongly supports the separation of state and religion. Despite this, an omission at the present time is deemed impossible as many Egyptians strongly defend this article or identify themselves with it.⁴² In an article just a few days before the referendum, which took

³⁵ AWR 10/2007, art. 32.

³⁶ AWR 5/2007, art. 13.

³⁷ AWR 10/2007, art. 63.

³⁸ AWR 13/2007, art. 69.

³⁹ AWR 3/2007, art. 51.

⁴⁰ AWR 9/2007, art. 83.

⁴¹ AWR 9/2007, art. 86.

⁴² AWR 10/2007, art. 62.

place on March 26, 2007, Sidhom expressed his hope that as article four was amended due to changes in the current situation, in the future this might also be the case with article two.⁴³

The arguments used by this group highlight the nature of the state, which has to be civil, not differentiating between its citizens on the basis of religion on the one hand, and the fear of the establishment of a religious state on the other hand. The present wording of article two gives a clear preference to Islam over any other creed practiced in Egypt, and thus can be perceived as discriminatory, especially by non-Muslim minorities. If discrimination actually exists because of this article should be a subject for further study. However, it seems that the Supreme Constitutional Court is eager to interpret the second article in a way that does not violate the rights of minorities.⁴⁴

The fear of the establishment of a religious state is understandable. The Muslim Brotherhood seems to be gaining more and more support, as are other Islamic movements, and neither their treatment of the *ahl al-dhimmī* nor their interpretation of *Sharī'ah* is clear, which leads to the second question: What is *Sharī'ah*, e.g. what exactly is incorporated in it.⁴⁵ The second article is very vague in this respect, leaving a lot of space for interpretation which in turn strongly depends on the religious [and political] nature of the ruling party. Therefore an abuse of this part of the constitution, resulting in discrimination of all parts of society, but especially non-Muslims, is quite conceivable.

5.2.1.2 Coptic expatriate arguments

The main argument put forward by the expatriate Egyptian Copts is the notion that article two discriminates against all non-Muslims, but especially against Copts. This is interesting to note, as many of them have not lived in Egypt for a long time, thus occupying the position of an observer.

°Adlī 'Abādīr, a Coptic businessmen who currently lives in Switzerland, encourages Copts to call for the abolishment of article two as it discriminates against them by mentioning Islam as the state religion.⁴⁶ Similarly, Michael Munīr, the president of the U.S. Copts Association describes the second article as a racist article which contradicts citizenship as well as the civil nature of the state, and on this basis demands its omission or amendment.⁴⁷ Kamīl Halīm, the chairman of the Coptic Assembly of America, also focuses on the state, arguing that article two submits the state to the interpretations of the *shaykhs*, whilst opening the door to fanatics. With this, he refers to the fact that *Sharī'ah* is not clearly defined⁴⁸ – neither in general nor in the wording of this article in particular. Majdī Khalīl, an expatriate Coptic activist living in the United States, goes further and states that this article is the "qā'idah" of

⁴³ AWR 12/2007, art. 74. Article four refers to the economic system of Egypt. Before the constitutional change it read: *The economic foundation of Egypt is a socialist democratic system based on sufficiency and justice in a manner preventing exploitation, conducive to liquidation of income differences, protecting legitimate earnings, and guaranteeing the equity of the distribution of public duties and responsibilities*, and it was changed into *The national economy is based on the development of the economic activity, social justice, the guarantee of the different forms of property rights and the preservation of laborers' rights.* (<http://constitution.sis.gov.eg/en/ecard03.pdf>).

⁴⁴ Prentice, T, Article Two of the Egyptian Constitution,, chapter 3.

⁴⁵ This complex issue is dealt with in Prentice, T, Article Two of the Egyptian Constitution,, chapter 1.

⁴⁶ AWR 4/2007, art. 48.

⁴⁷ AWR 10/2007, art. 71.

⁴⁸ AWR 6/2007, art. 47.

the Egyptian Constitution, referring to the militant Islamist organization established by 'Usāmah bin Lādin.⁴⁹ He does not further explain this comparison but it is clear that he believes that the article poses a deadly threat to non-Muslims and possibly also for moderate Muslims, who do not know when it will affect them. An article that he wrote in June 2005 makes it obvious that he regards *Sharī'ah* as disadvantageous for non-Muslims and women.⁵⁰

ʿĀdil Jundī's views have already been explained in the previous section. In the discussion about the constitutional amendments he responds to a few statements that were made in favor of article two by questioning the assumed tolerance of *Sharī'ah*. Jundī questions how someone would be dealt with who does not want to accept it as a legal system, regardless of whether or not they are Muslim, even if it is meant to be applicable to everybody who accepts it regardless of their personal religious creed. Would another legal system, possibly parallel to the present one, be created?⁵¹ Jundī is probably trying to point out that not every Egyptian supports *Sharī'ah* and that this can be interpreted as discrimination against non-Muslims as it is still a legal system derived from a religion. However he presents a weak example as no matter what kind of legal system is applied, there will always be citizens who are not satisfied with it however this will not lead to the creation of a parallel system. Still, it needs to be admitted that 'secular' legal systems are more flexible regarding changes and amendments.

The expatriate Copt arguments are similar in both content and tone. They are much more aggressive and direct than those made by the Copts within Egypt and this has led to harsh criticism. Furthermore they tend to concentrate on the discriminatory aspect – however, they only have access to the stories that reach them, which can be particular incidents told in an exaggerated way. They are not able to verify those stories or place them in a broader picture as they haven't experienced life in Egypt for a very long time. Yet, even though their attitudes have been attacked by Muslims and Copts⁵² they have neither changed the way they present their views nor their views themselves.

5.2.2 Amendment

This group mainly consists of Coptic intellectuals or clergymen. The arguments are more diverse than those favoring the omission of article two and can be grouped the following way:

One group criticizes the formulation which mentions *Sharī'ah* as "the" main source of legislation calling to change it into "a". Although *Sharī'ah* is the main source and not the only, it is the only one used in reality. By changing the definite article into an indefinite "a", supporters of this opinion want to ensure the use of other sources in the constitution. One strong advocate of this demand is Bishop Marqus, the Bishop of Shubra al-Kheima and the former official spokesman for the Coptic Orthodox

⁴⁹ AWR 2/2007, art. 33.

⁵⁰ AWR 23/2005, art. 3.

⁵¹ AWR 11/2007, art. 67.

⁵² As noted before, these Copts belong to the pro-governmental strata and do not emphasize their religious affiliation much; therefore they are to be considered solely from a political, secular point of view.

Church.⁵³ He was heavily criticized for this opinion, especially by the Coptic Orthodox Church, because he has he differed from Pope Shenouda. Rev. Dr. Ikrām Lam'ī, a pastor of the Evangelical Church shares Bishop Marqus' opinion that *Sharī'ah* should not be the sole source of legislation but he elaborates by saying that both Islamic and Christian teaching should be mentioned as sources of legislation.⁵⁴ He also stated in another media article that the rejection of article two does not equal a rejection of Islam itself, thereby pointing out the danger of confusing this article with Islam itself.⁵⁵ The fact that he felt obliged to make this statement demonstrates the sensitivity of the issue. This is also mirrored in Nasīm Majlay's statement that he wants article two to be amended so that *Sharī'ah* is mentioned as one of the sources of legislation to prevent sectarian strife, as this amendment would be a compromise between Muslim and Christian views. In his opinion, the present wording of article two constitutes a violation of Egyptian unity and impedes judicial sentences.⁵⁶

A stand similar to that of Dr. Ikrām Lam'ī is taken by Kamāl Sa'd, an author, who does not want article two itself to change but asks for an explicit reference to Christians and Christianity as partners of the homeland.⁵⁷

The opinion that Egypt in general is a multi-religious country and that this fact should be reflected in its Constitution is shared by many. The Cairo Institute for Human Rights Studies sent an appeal to the President and the Speakers of the two Parliamentary Houses, demanding the amendment of article two, whereby it put special emphasis on the need for religious neutrality and the fact that not only the Islamic but also the Pharaonic and Coptic civilizations influenced history and shaped Egypt. Moreover the multi-religious nature of Egypt is mentioned.⁵⁸ An amendment to article two should take all this into account. The appeal was signed by 185 signatories.⁵⁹

Nawāl al-Sa'dāwī is a feminist activist who lists several reasons which, in her opinion, necessitate an amendment of article two. Besides the multi-religious nature of Egypt she argues that basing the law on a religious foundation contradicts democracy as well as the amendments to art. 1 (citizenship) and article 40⁶⁰ of the Constitution. She also calls Copts cowards for not rejecting the second article.⁶¹

Dr. Sawfat al-Bayyādī, the head of the Evangelical Community Council, opposes the formulation "the official religion", as it creates the impression that there is only one religion, thereby discriminating against the others. This view is shared by Bishop Marqus who stated that this formulation makes Christianity inferior to Islam.⁶² However al-Bayyādī does not call for an amendment to article two but rather for a law

⁵³ AWR 3/2007, art. 41; 4/2007, art. 50; 7/2007, art. 41. He lost his spokesman position due to his differences with Pope Shenouda on that matter.

⁵⁴ AWR 9/2007, art. 90.

⁵⁵ AWR 12/2007, art. 73.

⁵⁶ AWR 9/2007, art. 93.

⁵⁷ AWR 6/2007, art. 51.

⁵⁸ AWR 10/2007, art. 66; AWR 11/2007, art. 69.

⁵⁹ AWR 11/2007, art. 69.

⁶⁰ Article 40 of the Egyptian constitution reads as follows: *All citizens are equal before the law. They have equal public rights and duties without discrimination on grounds of race, ethnic origin, language, religion or creed.* (<http://constitution.sis.gov.eg/en/2.htm>).

⁶¹ AWR 7/2007, art. 41.

⁶² AWR 7/2007, art. 41.

which regulates the civil affairs of all Egyptians.⁶³ In another article however he states that the discussions about art. 2 are "useless" as there is no proposed amendment. In addition, citizenship will be guaranteed which makes an omission of the second article unnecessary.⁶⁴

Another aspect is the relationship between Islam as the religion of the state and the nature of the state itself. It is on this basis that Mu'taz al-Fajīrī, the Manager of the Cairo Institute for Human Rights, Samīr Marqus, a Coptic thinker, and Kamāl Būlos ask for the modification of article two and article five⁶⁵ because they perceive them as being contradictory: It is not allowed to form parties on religious grounds but the state itself is based on *Sharī'ah*. Furthermore, they demand a clear separation between religion and the state.⁶⁶ It is obvious that they perceive *Sharī'ah* as a religious law and not, as many supporters of it do, as a law which is derived from a religion but is meant to be applicable to everybody who believes in it regardless of his or her religion. The same applies to Dr. Sa'ad al-Dīn Ibrāhīm, the chairman of the Ibn Khaldūn Center, who assumes that an amendment or the cancellation of article two might not be possible at the moment but that an additional article asserting the secular nature of the state is necessary.⁶⁷

An interesting point is made by Jamāl al-Bannā, a Muslim thinker and brother of the Muslim Brotherhood founder Hasan al-Bannā who believes that *Sharī'ah* means justice, thus the constitutional text should read or be changed into "principles of justice are the source of legislation" so as to fulfill *Sharī'ah* and avoid sectarian tension. He adds that disputes about the content of *Sharī'ah* are not yet settled between Muslims themselves.⁶⁸

To sum up it can be said that the calls for an amendment of article two try to find a middle ground between not attacking or not being seen as attackers of Islam on the one hand, acknowledging that it is the religion of the majority, and pointing out facts that cannot be denied, such as the pluralistic nature of Egypt or the difficulties and dangers of basing a state on religious principles.

5.2.3 Keeping article two

The group arguing for the maintenance of article two is by far the biggest one, and includes both Muslims and Christians. As the former tend to argue from a religious perspective for the maintenance of the second article, most of the latter try to find reasons to justify the existence of the article as they feel that it is not possible to change it because of social reasons and religious sensitivity. As a result of these different approaches Christians and Muslims are dealt with in separate sections so as to point out their differences and similarities.

⁶³ AWR 4/2007, art. 50.

⁶⁴ AWR 9/2007, art. 89.

⁶⁵ They refer to the following part of article five: *Citizens have the right to establish political parties according to the law and no political activity shall be exercised nor political parties established on a religious referential authority, on a religious basis or on discrimination on grounds of gender or origin.* (<http://constitution.sis.gov.eg/en/2.htm>).

⁶⁶ AWR 9/2007, art. 92.

⁶⁷ AWR 53/2006, art. 51.

⁶⁸ AWR 10/2007, art. 61.

5.2.3.1 Copts in Egypt

Kamāl Zākhir Mūsá, already mentioned above, expresses his belief that the objection to article two would be perceived as an assault on Islam by many Muslims, thus regarding Copts as attacking their religion.⁶⁹ Therefore he believes that it is impossible to abolish article two.⁷⁰ However in previous articles he has stated that he sees article two as opposing the civil nature of the state⁷¹. Mūsá is joined in his view by Nabīl Luqā Bibawī, who thinks that the abolition of article two would be of no benefit to Copts while at the same time provoking Muslims. He also adds that *Sharī'ah* is not the sole source of legislation.⁷² In this, he is referring to the Personal Status Law, where Christian rules are applied in Christian cases. This opinion – that *Sharī'ah* actually allows Copts to have their own religious regulations applied in some cases – is shared by many others.⁷³ A similar view is held by Pope Shenouda III who says that if rightly applied, all laws and articles are for the good of the people.⁷⁴ At the same time he rejects Coptic expatriate calls to omit article two⁷⁵ and points to the danger of amending it.⁷⁶ He does not further specify this danger, but it can be strongly assumed that he is referring to sectarian division or violence. It is however interesting to note that Pope Shenouda strongly opposed the amendment of article two in 1980, which made *Sharī'ah* the main source of legislation, stating that Islam is transferred into "a vehicle for nationalism".⁷⁷

Other Coptic thinkers, like Rafīq Habīb and Amīn Iskandar⁷⁸, simply refer to the fact that the majority of Egyptians follow the Islamic creed and that it is therefore understandable that Islam is the state religion. In criticizing Bishop Marqus for voicing his support for an amendment of article two in public, Habīb responds that such changes would need the agreement of all Egyptians, Muslims and Christians.⁷⁹

Another argument aims to differentiate between the wording of the text and the social reality. Bishop Munīr, the head of the Episcopal Church in Egypt, for example, states that it is not the text itself that constitutes a problem but the different interpretations of *Sharī'ah*,⁸⁰ which leave all Egyptians, but especially non-Muslims, anxious about any future changes. Jamāl As'ad 'Abd al-Malik, a Coptic thinker, also sees no problem in the wording of the article, saying that it affirms the equality of all Egyptians and that the problems resulting out of it lie in its application.⁸¹ He furthermore adds that even if the article was canceled it would not solve Copts' problems as there is no direct link between these two issues.⁸²

⁶⁹ AWR 2/2007, art. 31.

⁷⁰ Ibid.

⁷¹ AWR 22/2005, art. 5; AWR 24/2005, art. 13.

⁷² AWR 9/2007, art. 84.

⁷³ Dr. Rasmī 'Abd al-Malik in AWR 9/2007, art. 90; Rafīq Habīb in AWR 11/2007, art. 63, Edward al-Ghalī al-Dahabī in AWR 28/2006, art. 41.

⁷⁴ AWR 12/2007, art. 73.

⁷⁵ AWR 7/2007, art. 41.

⁷⁶ AWR 12/2007, art. 73.

⁷⁷ AWR 6/1999, art. 13.

⁷⁸ AWR 28/2006, art. 41.

⁷⁹ AWR 3/2007, art. 41.

⁸⁰ AWR 4/2007, art. 50.

⁸¹ AWR 6/2007, art. 19.

⁸² AWR 11/2007, art. 63.

Another point mentioned in the 'Coptic' debate is the meaning of citizenship, which triggered the whole debate. Coptic thinker, Mīlād Hannā does not think that article two contradicts citizenship,⁸³ while some other Copts try to appease the fears of their fellow citizens, pointing out that *Sharī'ah* does not contradict the Christian faith.⁸⁴

The analysis of the Copts' arguments shows that all of them try to show in one way or another that article two does not contradict, suppress or attack the Christian faith and that consequently its omission or amendment is not necessary. In conjunction with all of this is the pragmatic wish not to be regarded as objecting to Islam (as there is a confusion between Islam as a religion and *Sharī'ah* as a law) which might lead to sectarian strife and thus be counter-productive. This impression is enforced by the fact that many of the participants in the discussion point to the danger of possible sectarian strife. Thus it can be assumed that not all of their arguments really reflect their personal opinions but are rather used to explain why there is no need to abolish or amend article two while in fact it is perceived that there is no way to do anything about it.

5.2.3.2 Muslims

Muslims who want to keep article two use different arguments, ranging from a mainly religious rationale to a more secular stance. Attention should be paid to how far Islam as a religion is confused with *Sharī'ah* as a legal system.

Manī' °Abd al-Halīm, the former dean of the Usūl al-Dīn (Fundamentals of Religion) Faculty at the Azhar University regards article two as an expression of reality and of the public will which does not harm the other (e.g. non-Muslims).⁸⁵ Mustafā al-Fiqī, who is pro-government and the Chairman of the Foreign Relations Committee of the People's Assembly⁸⁶ shares this opinion as he states that the second article "strongly matches 'Egyptian identity'".⁸⁷ He also wants to ease Copts fears by saying that they do not have to worry about *Sharī'ah* as only its principles and not its conditions are the basis of legislation. Furthermore it is a legal system just like any other legal system and it is taught at every law school in the world.⁸⁸ Mahmūd °Ashūr, the former deputy of the Azhar University, who rejects the omission of *Sharī'ah* as he argues that state and religion cannot be separated, states that it only addresses general issues whereas Christians can refer to their own regulations in specific cases.⁸⁹

A slightly modified view is the one that states that *Sharī'ah* is a legal system which can be embraced by all those who want to accept it, no matter which religious creed they follow. An advocate of this opinion is Muhammad °Imārah, a well-known Islamist thinker, who says that *fiqh* is an objective law in the frame of *Sharī'ah* and does not contradict any other creed.⁹⁰ Dr. Hāzīm al-Biblāwī, an economic expert,

⁸³ AWR 1/2007, art. 35.

⁸⁴ Jamāl As'ad Abd al-Malik in 7/2007, art. 41; Albīr °Āzīr Bārīh in 9/2007, art. 82.

⁸⁵ AWR 4/2007, art. 50.

⁸⁶ Dr. Muḥīd Shihāb in AWR 10/2007, art. 70; Usāmah Salāmah in ibid., Dr. Ibrāhīm Nājī al-Shahābī in AWR 9/2007, art. 91.

⁸⁷ AWR 5/2007, art. 13.

⁸⁸ AWR 9/2007, art. 96.

⁸⁹ AWR 4/2007, art. 50.

⁹⁰ AWR 10/2007, art. 32. Others sharing this opinion are Dr. °Abd al-Ghanī in AWR 8/2007, art. 28; Hasan Abū Tālib in AWR 11/2007, art. 67;

shares the same view, declaring that *Sharī'ah* is not meant to distinguish between Muslims and non-Muslims; instead it is a legal system and applying it does not lead to the insertion of politics into religion.⁹¹ Fahmī Huwaydī, another well-known Islamist, mentions that throughout history *Sharī'ah* has protected non-Muslims' rights,⁹² and Sulayman Shafīq points out that the principles of the *Sharī'ah* are equivalent to the principles of humanity and all other religions as well as to human rights.⁹³ All of them are eager to point out that *Sharī'ah* does not discriminate against anybody; on the contrary it is compatible with other religious and secular principles. The same opinion is held by ʿĀtif al-Bannā, the Head of the Department of Constitutional Law at Cairo University who remarks that the problem does not lie in the wording of art. 2 but in the discriminatory behavior practiced in society.⁹⁴ Still it is obvious from their kind of argument that they deem it necessary for a nation whose majority follows the Islamic faith to be shaped by at least the principles of *Sharī'ah*. This opinion has its roots in their religious belief. An exceptional case might be Counselor ʿAdlī Husayn, the governor of Qalyūbiyah, who asserts that article two is "carefully drafted" which means that there is no reason to be concerned. He adds that discussion about this might lead to tensions in society⁹⁵ and therefore praises Pope Shenouda for avoiding discussions about that topic.⁹⁶ Although he is a Muslim arguing for the maintenance of *Sharī'ah* in the wording of article two, his position does not represent a religious but rather a government perspective.

A more religious perspective is taken by those who state that article two is unchangeable, thereby effectively turning it into a sacred part of the Constitution. One example of this is Muntasir al-Zayyāt, who holds that "no one is allowed to amend article two".⁹⁷

Another way of justifying and defending of article two is in suggesting a link between Islam, *Sharī'ah* and the conditions of a modern state. ʿAbd al-Muʿtī al-Bayyūmī, a member of the Islamic Research Academy and former Dean of the Faculty of Usūl-al-Dīn at the Azhar University argues that *Sharī'ah* guarantees Christians full rights as it is based on citizenship.⁹⁸ This means that he regards *Sharī'ah* as a legal system which is not restricted to Muslims thereby creating an affiliation between citizens and the state which exceeds the religious bond. Dr. ʿAlī al-Dīn Hilāl, the press secretary of the ruling National Democratic Party confirms that there is no contradiction between the idea of citizenship and article two.⁹⁹ An interesting point is made by Yahyā al-Jamal, a Professor of Constitutional Law at Cairo University, who says that article two only addresses the legislative bodies, not the judiciary,¹⁰⁰ which implies that *Sharī'ah* is the source for developing laws but not a model for judicial sentences.

For others Islam is the guarantor of morality, equality and democracy in a modern society. Here *Sharī'ah* is equalized with Islam as a religion. The most prominent

⁹¹ AWR 13/2007, art. 72.

⁹² AWR 10/2007, art. 69.

⁹³ AWR 7/2007, art. 42.

⁹⁴ AWR 4/2007, art. 50.

⁹⁵ AWR 9/2007, art. 96.

⁹⁶ AWR 10/2007, art. 68.

⁹⁷ AWR 8/2007, art. 28. Another example is Dr Mufid Shahāb in AWR 8/2007, art. 28.

⁹⁸ AWR 4/2007, art. 50.

⁹⁹ AWR 6/2007, art. 19.

¹⁰⁰ AWR 11/2007, art. 67.

person who holds this opinion is the Grand *Shaykh* of the Azhar, Dr. Muhammad Sayyid al-Tantāwī, who opposes the view that a state with a religious reference is a theocratic state and explains that religion is a necessary guideline.¹⁰¹ Of course article two mentions Islam as the religion of the state, but this does not imply that it is used as a political guideline. It has been seen that many Muslims try to define *Sharī'ah* as a legal system derived from a religion but not being 'religious' itself. Dr. Su'ād Sālih, an Azhar professor, maintains that the second article has to be kept to avoid disorder, which would be caused by secularism and go against citizenship.¹⁰² Tāriq al-Bishrī, a moderate Islamist, veteran judge and a specialist in minority affairs also believes that only Egypt as a civil state with a religious reference can guarantee equality and justice.¹⁰³ Mahmūd 'Ashūr concurs with this belief, reasoning that article two establishes equality, justice and the principles of citizenship since Islam as a world religion respects all human values.¹⁰⁴

Some voices also fear that calls for an amendment of article two will lead to sectarian strife and violence,¹⁰⁵ just as some Copts do. But of course, the argument looks different when used by the Muslim side as most of those using it actually do not want an amendment, yet alone the omission of article two.

Critics of the debate about article two in general are also voiced. Dr. Sa'īd Ismā'īl 'Alī, an author and an Islamic thinker, believes that the government wants people to be occupied with the discussion of article two so that they can pass other major amendments when people's attention is focused elsewhere.¹⁰⁶ Fahmī Huwaydī expresses his view of the negative impact of the discussion on society, saying that it has resulted in bitter feelings on both sides.¹⁰⁷

After analyzing the arguments of the Muslim side, it can be said that two core ideas emerge: one stresses the compatibility of *Sharī'ah* with other creeds. In this context it is often mentioned that *Sharī'ah* is a legal system just like any other legal system and can therefore be applied to all who decide to accept it regardless of their personal faith. The second way of explaining the perceived necessity of keeping article two is the belief that the needs of the modern state, such as equality and justice, cannot be fulfilled without religion as a guideline, thus making it indispensable. The danger however lies in non-differentiating between Islam as a religion and *Sharī'ah* as a law.

6. Conclusion

This paper has shown that those involved in the debate over article two can easily be grouped according to their official religion, but there are also other factors that explain the different lines of argument that people have adopted .

One is the political factor. Most of the people known to be pro-government or to be associated to the government belong to the secular sector of society and although they

¹⁰¹ AWR 10/2007, art. 32.

¹⁰² AWR 4/2007, art. 50.

¹⁰³ AWR 10/2007, art. 32.

¹⁰⁴ AWR 10/2007, art. 70.

¹⁰⁵ Jamal Badāwī in AWR 9/2007, art. 89; Muhammad Sakrān in AWR 10/2007, art. 70; Isām Dirbālah in AWR 10/2007, art. 71.

¹⁰⁶ AWR 8/2007, art. 28.

¹⁰⁷ AWR 13/2007, art. 69.

may argue for keeping article two, they do so out of political motives and calculations. Muslims and Christians alike are to be found in this group which includes; Idwar al-Dahabī, Nabīl Luqā Bibāwī [both Copts] and Mustafá al-Fiqī. In contrast to them, Jābir 'Asfūr and ʿAbd al-Mun'im Saʿīd, both Muslims and close to the government, opt for revising or abolishing article two. So even though they share the same background [government-affiliated and secular stand] they do not form a homogenous group.

Similarly there is the group of Copts who argue for the preservation of the second article while focusing on the peaceful nature of *Sharīʿah*. It has often been mentioned that most of them do not really support the second article but fear sectarian unrest if it was altered. So their position can be more or less reasoned as the abiding of the minority by reality, accepting the present situation to prevent worse in the future. The same goes for the Copts and Christians who demand an amendment of article two but they take a more religious stand as they either ask for Christianity or Christian personal status laws to be mentioned in the Constitution. So they are ready to accept the dominance of Islam and *Sharīʿah* in the Constitution as long as they feel secure about their own belief being acknowledged in this document and a guarantee that they will not be discriminated against. Again, this is choosing the easier way, e.g. not to ask for the abolition of article two. Conversely, many expatriate Copts do not fear any controversy as they do not have to face the reactions to their statements. On top of this, they strongly identify themselves as Copts; the discriminated minority. This feeling is fostered by the mainly one-sided stories that reach them and focus on the discriminatory aspect. Copts who live in Egypt and want to see the omission of article two but are not affiliated to the government also take a secular stance in arguing from the point of citizenship which asks for a broader affiliation to the state than just through religion. One example of this is Yūsuf Sidhom, the Editor-in-chief of *Watanī* newspaper. Another argument is the fear of the establishment of a religious state which people perceive to be facilitated by article two.

Most Muslims opt for keeping article two and most of those making their opinion heard are either Azhar scholars or Islamists which means that they, although very different from each other, present a conservative point of view. The former mostly want to keep *Sharīʿah* as the main source of legislation because they see it as a necessary guideline in modern times (thereby confusing religion with the law). For the latter it simply is part of their faith that an Islamic country – as they perceive Egypt to be – has to be governed according to *Sharīʿah*. They often use historical examples of how good Christians in former times lived under *Sharīʿah* to calm down fears of their non-Muslim fellow citizens. They also see no contradiction between Islamic law and citizenship as for them the latter is included in the former.

The discussion about the second article of the Egyptian Constitution shows how sensitive the topic really is. It also shows that the main divisions are along religious lines but that the reasoning behind these opinions are often subject to considerations which can be shared by Christians and Muslims alike.

A topic for further research would be to focus on individual people in this debate and analyze their arguments in relation to their work and statements. By doing so, light can be shed on whether these statements correspond to the general appearance of a person or stem from other calculations.