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PUBLIC ORDER AND EGYPT'S STATIST TRADITION

By Michael Wahid Hanna

On the night of December 7, 2014, with an investigative reporter and cameramen in tow, Egyptian security forces raided a traditional public bathhouse, or *hammam*, rounding up tens of unclothed men. The men were accused of “perversion” and “debauchery,” and the lurid pictures of their arrest proliferated online and through social media. The raid was part of a recent, broad crackdown on homosexuality in Egypt, but it reflects longstanding trends within Egyptian society that prioritize notions of collective good and public order, rooted in a robust conception of the centrality of the state. Occurring in the midst of deteriorating security and the persistent threat of terrorism, the arrests reveal the Egyptian state’s warped sense of priorities as well as a national hysteria regarding any intimation of nonconformist behaviors, which are deemed as threats to national stability. In this setting, the state has accused various networks of plots seeking to undermine social cohesion and subvert the public order. The narrowing of individual rights during this desperate search for enemies will undoubtedly produce new victims well into the foreseeable future.

While Egyptian statism has been further emboldened and rejuvenated in the aftermath of the July 2013 military-led ouster of Muslim Brotherhood president Mohamed Morsi, the statist pursuit of public order is not a new phenomenon. The content of that statist vision has evolved over time and has become further Islamized along with Egyptian society, but a

priority on public order and a chronic disregard for a wide variety of individual rights are persistent Egyptian themes. In light of the country’s fraught sectarian relations and worsening climate for minority rights, it is no surprise that notions of public order have dominated the manner in which the state has managed its religious minorities, with a consistent view to limiting the possibilities for religious liberty. While the role of religion in public life is central to understanding how notions of public order have been enforced by Egyptian authorities, its application has been and continues to be broader, encompassing a variety of political and social behaviors deemed to be a threat to the state, society, and their stability.

The rhetoric of statism has exploded as Egypt has experienced unprecedented political instability since the 2011 fall of longtime dictator Hosni Mubarak. This instability and destructive polarization continues to mark Egyptian political culture, and it formed the backdrop for the military’s direct and explicit re-intervention into Egyptian political life. Egyptian leaders and many supporters of the coup drew upon traditional

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statist notions of “*heebat al-dawla*,” or the dignity of the state, as a declaratory justification for the military’s intervention. This narrative prioritized the state and the restoration of its proper role and respect. While there was no consensus among the broad tactical alliance that propelled forward the unprecedented June 30th protests, those groups and leaders that remained focused on the themes of individual rights and liberties were outnumbered and thwarted by the statist and militarists that came to the fore following the coup. The succeeding months have only reinforced those initial impulses, as a stability-starved public has sought succor in the possibilities that repressive order can once again be reengineered and reimposed.

Such attitudes are reflective of a deeply ingrained tradition that has viewed the realm of individual rights as a subordinate concern, secondary to considerations about shared public goods. It is against this backdrop that the Egyptian state has developed a wide-ranging and repressive conception of public order, which has been employed to limit individual and minority rights and constrict religious liberty.

The State of the Egyptian State

The current revitalization of Egyptian statism draws upon a significant tradition that had reached its apotheosis under the military-dominated regime of President Gamal ‘abd el-Nasser. The imprint of that legacy of statist thought has endured. Discussing Egypt’s political trajectory from the 1960s through the 1980s, Bruce Rutherford (2008, 131) argues that Egypt’s “prevailing ideology was a sweeping conception of statism that created a vast and pervasive state apparatus.” This overriding statism was reinforced by the perpetual state of war with Israel, efforts at nationalization and economic centralization, and an autocratic political outlook that sought to tightly control political life and stamp out dissent.

As Egyptian society itself became increasingly Islamized, the very idea of the state evolved in significant ways and became increasingly interlinked with religion. Following the devastating defeat in the June 1967 war with Israel, Egypt and the Arab world began a furious

search for alternative political visions, as the promises of Nasser and his brand of Arab nationalism were undermined by the abject state of the region. It is in this setting that the Arab world witnessed the beginnings of a potent and continuing religious revival, the effects of which are still being contended with in the present.

In the context of Egypt, the most notable manifestation of these trends was the introduction of Article 2 in the Egyptian constitution, which declared that “the principles of the Islamic *shari’a* are a chief source of legislation.” This constitutional change marked a significant departure from Egypt’s recent history, which had witnessed legal modernization efforts in the late 19th century that had minimized the role of Islamic law. Islamic law was confined to issues of personal status, such as marriage, divorce, and inheritance. The cultivation of this distinctly Islamic identity was partly an effort by Anwar el-Sadat, who succeeded Nasser, to cultivate new constituencies and undermine his Nasserist political rivals. However, beyond its political motivations, it was testament to the cultural, social, and religious changes that were convulsing Egypt and the Arab world and Islamizing public space and discourse.

The shift was not merely symbolic and rhetorical, as the state undertook a broad legal review to ensure compliance with the country’s more potent religious strictures. Article 2 was later narrowed even further through the introduction of the definite article “the” in place of the indefinite article “a,” transforming *shari’a* into the ultimate constitutional benchmark. The full weight of these developments would only become apparent years later, but were a reflection of the changing conceptions of the proper role of religion in public life. These evolving notions would increasingly be married with traditional notions of statism and defense of the public order.

Separate and apart from the formal legal and jurisprudential shifts, the process of Islamization has had broader ramifications for Egyptian identity, which has taken on a more overt religious cast and adopted more rigid understandings of religiosity and faith. These shifts were often adopted and encouraged by

Mubarak's Egypt, which sought to co-opt Islamizing trends as a means to inoculate the regime against Islamist opposition. More concretely, Egyptian public life was changing for the worse, with rising levels of sectarianism, shrinking space for intellectual inquiry, and increasing vigilance for blasphemous thought.

While, as Rutherford (2008) notes, Egypt's statist order was weakened by economic challenges in the late 1980s/early 1990s, invocations of public order remained a vital facet of the state's management of society and conflict. Following the uprising and mass mobilization of 2011, it appeared that Egypt was on the cusp of fundamentally reordering the relationship between state and citizen. That transformative opening, however, was fleeting. Egypt's current authoritarian relapse has revitalized Egypt's statist traditions, often in unprecedented fashion. Egypt now faces real threats from terrorism and violence, and the state has taken advantage of the current moment to put forward far-reaching arguments about the proper role of the state and its efforts to ensure public order and stability.

This moment of hyper-nationalism and paranoia has produced apologias for repression and a broad acceptance of the paramount importance of the collective good over the rights of individual citizens. While the ascendant strain of Egyptian nationalism is often posited as an alternative to the Islamist vision of the Muslim Brotherhood and its allies, what is often termed as non-Islamism in Egypt should not be understood as either secular or liberal. The constituency for liberal democracy in Egypt remains vanishingly small. Instead, Egypt's military-led political order has championed an Egyptian nationalism that itself incorporates key aspects of Islamist thought. In distinction to the Islamist project, however, it is important to note that the current instrumentalization of religion is employed as a buttress to state authority and legitimacy and in furtherance of the Egyptian regime's statist vision.

But it is the actual state of the Egyptian state that likely represents the chief vulnerability for Egypt's rulers. While deploying the rhetoric of stability and public order to marshal support for the regime and to mark its enemies, it is the manifest deficiencies of the state and its performance that will create the possibility for future disillusionment and dissent. Despite broad-based repression in the name of public order, Egypt's current rulers have not provided a credible path forward for the country. The hyperbolic veneration of the state and its institutions, and the abuses committed in their name, will do little to improve the lot of Egyptians and will go a considerable distance in further tarnishing Egypt's image.

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Defining the Public Order

Any discussion of the concept of public order in Egypt will inevitably examine the now infamous case of the academic Nasr Hamid Abu Zayd, as it represents one of the clearest articulations of the Egyptian legal understanding of public order. It is also a testament to the ways in which increasingly restrictive religious ideas have permeated Egyptian jurisprudence. Abu Zayd was a scholar at Cairo University who focused on Quranic exegesis, and the controversy began following a refusal of promotion. The case was presented by a third party and was an accusation of apostasy. The practice of making such accusations proliferated during the 1990s. As Olsson (2008, 98) notes, "many Islamist lawyers have filed lawsuits of *hisbah* against secularists, feminists, liberals and others." The filing was based on Egypt's personal status law, and, as Agrama (2012, 19) points out, the principle of *hisba* is "an individual and collective practice of moral criticism technically defined within the *Shari'a* as the commanding of good when it is manifestly neglected, and the forbidding of evil, when its practice is manifest." The initial filing made in 1993 maintained that certain of Abu Zayd's writings and thoughts must be deemed apostasy based on classical Hanafi legal scholarship. The

accusation further argued that his marriage should be nullified as a result of the finding of apostasy. In 1996, Egypt's Court of Cassation eventually affirmed a ruling of apostasy based on his scholarly writings and nullified his marriage as a result, forcing him and his wife to flee the country and settle abroad.

It is in the appellate court ruling that several key and troubling conclusions were reached. First, as Agrama (2012, 51) summarizes, the court addressed the issue of freedom of belief by arguing that

freedom of belief was not defined as freedom to believe what one wants; it was not solely a matter of being able to choose one's own opinion or views. Rather, freedom of belief also consisted in a protection from those actions and practices that would corrupt religious belief and obstruct the conditions needed for its proper maintenance and practice.

Second, the appellate court went on to find that

what Abu Zayd had written contravenes not only religion, but also the Constitution of the Arab Republic of Egypt. Its article 2 states that Islam is the religion of the State. ... Thus, an attack on the [foundation of Islam] is an attack against the State which is founded upon it. He also contravenes article 9 of the constitution that states that the family is the basis of society, and its basis is religion.

As Agrama rightly points out, the court's argument could be distilled into the simple idea that "Abu Zayd has attacked the principles of the public order itself."

An earlier 1970s case that carved out a technical exception to the public order nonetheless provided a sweeping understanding of what was entailed by the concept. The case involved a mixed Christian denominational marriage, which, in distinction to Christian marriages within the same denomination, is subject to the *shari'a* under Egyptian family law.

At issue was the attempt of a Christian man to claim the right to polygamous marriage. In describing the public order, the court stated that it:

[C]omprises the principles (*qawa'id*) that aim at realizing the public interest (*al-maslaha al-'amma*) of a country, from a political, social, as well as economic perspective. These [principles] are related to the natural, material and moral state of affairs (*wad'a*) of an organized society, and supersede the interests of individuals. The concept of [public order] is based on a purely secular doctrine that is to be applied as a general doctrine (*madhab 'amm*) to which society in its entirety can adhere and which must not be linked to any provision of religious laws.

However, this does not exclude that [public order] is sometimes based on a principle related to religious doctrine, in the case when such a doctrine has become intimately linked with the legal and social order, deep-rooted in the conscience of society (*damir al-mujtama*), in the sense that the general feelings (*al-shu'ur al-'amma*) are injured if it is not adhered to (Agrama 2012, 93).

The public order then, while difficult to ascertain with specificity, simply amounts to those issues which are deemed to be prerequisites for the maintenance of stability and the collective good. Very clearly the rights of individuals are not conceived as sacrosanct.

The Limits of Freedom of Belief

In their comparative discussion of religious liberty in Europe and Egypt, Saba Mahmood and Peter G. Danchin argue that

the deployment of the term *public order* in all the judgments we analyze produces two effects: one, it authorizes the state's intervention in the domain of religious belief that it declares to be autonomous and sacrosanct; two, it privileges the values and

commitments of the religious majority as the norm against which the religious practices of the minority are judged and sanctioned. (Mahmood and Danchin 2014, 130)

This privileging of the religious discourse of the majority and its establishment as a prism through which to adjudge considerations of a broader public good clearly have serious implications for minority groups and for the possibility of religious liberty and freedom of belief.

A paradigmatic example of this conundrum is the status and situation of Egypt's tiny Baha'i community, which comprises less than 1 percent of the country's population. Since Baha'is have never been protected minorities under Egypt's constitution or a formally recognized religious minority under *shari'a*, as "people of the book," their efforts to secure various rights have exposed the limitations of religious liberty in Egyptian society and legal practice. In short, the Egyptian state has only granted religious rights and protection to the three "heavenly religions" (Islam, Christianity, and Judaism).

As a result of this lack of legal recognition Baha'is have faced serious restrictions on their ability to practice their religion and interact with the state. The plight of the Baha'i worsened dramatically following the 1960 decree issued by President Nasser (Law 263/1960), which liquidated their institutions and prohibited the practice of the religion. The decree had its roots in Egypt's longstanding conflict with Israel, stemming from the location of the Baha'i World Center, which serves as both the spiritual and administrative center of the faith and is in Haifa. The decree essentially forced the faith underground and out of the public sphere, but complicated the interactions of Baha'i citizens with the institutions of the state. At its most pedantic, this lack of recognition is exemplified when Baha'is seek to list their religious affiliation on their national identity cards, a mandatory practice for recognized religions. This inability to provide such recognition is particularly significant in Egypt as a result of "the necessary relationship posited between the religious status of a

community and its autonomy over family law" (Mahmood and Danchin 2014, 133).

The court cases dealing with the treatment of the Baha'i faith have produced a series of recent rulings stemming from the state's attempt to nationally computerize identity cards. In one such challenge the administrative court sought to differentiate between private religious beliefs and the public expression of those beliefs. As such, the court argued that

Muslim lands have housed non-Muslims with their different beliefs; that they have lived in them like the others, without any one of them being forced to change what they believe in; but that the open practice of religious rites was confined to only those recognized under Islamic law. In the customs of the Muslims of Egypt this is limited to the People of the Book, that is, Jews and Christians only. (Mahmood and Danchin 2014, 136)

Paradoxically, the administrative court went on to grant Baha'is the right to list their religious affiliation based on the notion that doing so would be the only practicable route for delineating their unequal status. The ruling was misrepresented in the Egyptian press and caused a great deal of demagogic furor in the process. The lower court ruling was, however, subsequently overturned on appeal by the Supreme Administrative Court. While the court upheld the portion of the lower court ruling that guaranteed freedom of belief in the private sense ("Every human being has the right to believe in the religion or belief that satisfies his conscience and pleases his soul"), it rejected the notion that the public expression of those beliefs was unlimited (Mahmood and Danchin 2014, 139).

Here the court explicitly invoked a public order premised on the majority faith and its strictures: "As to the freedom of practicing religious rites, this is subject to limitation ... of respecting the public order and public morals" (Mahmood and Danchin 2014, 139). In a constitutional order in which *shari'a* serves as the primary point of reference, the mere allowance of Baha'is to list their faith in a purely administrative

setting is deemed to be an explicit recognition of the religion and an affront to social cohesion.

The ruling, however, sanctified a legal lacuna in which Baha'i citizens were effectively stripped of their ability to function in relation to the state and its administration. On further appeal, the holding was narrowed to allow for the placing of

a dash (-) before the line reserved for religion in the official identification documents of all Egyptian citizens who can produce documents showing that they, or their ancestors, were followers of a religious belief other than those recognized by the state. (Human Rights Watch 2009)

The court went on to explain more fully the rationale for imposing such draconian limitations on Baha'i citizens, arguing that the freedom of practicing religious rites was "made conditional on compliance with the public order and public morality" (Mahmood and Danchin 2014, 143). This contextualized understanding of public order in Egypt is derived from "the fact that it is a state whose official religion is Islam, which is the religion of the majority of the population, and from the fact that Islamic shari'a is the principal source of legislation" (Mahmood and Danchin 2014, 143).

Importantly, successive efforts at constitutional drafting in the post-Mubarak era have furthered this narrow understanding of citizenship. As the drafting process evolved, the question of how Baha'is would be treated was seen as a litmus test of sorts for Egypt's new political order (Bashir 2012). Both the 2012 Muslim Brotherhood-led constitution and the 2014 post-coup constitution limit state recognition of religions to the three monotheistic faiths. As an indicator of the health of both stages of Egypt's transition, the continued marginalization of Baha'is is indicative of problematic popular understandings of citizenship and pluralism, rooted in attachments to narrow conceptions of social cohesion.

A similar predicament also persists for Egypt's Shia Muslims, who have been unable to win formal state recognition for their faith. In addition to harassment and limitations on their

religious expression, Shia have also been subject to arbitrary arrest, as was the case in July 2012 when a criminal court sentenced a Shia citizen, Mohamed Asfour, to prison on defamation of Islam charges that were solely linked to his Shia religious affiliation (Human Rights Watch 2012).

A campaign against atheists and atheism now appears to also be a distinct possibility in light of statements by religious authorities and actions by the state, including, most recently, a raid and closure of an establishment described by municipal authorities as an "atheists' café." Upon its closure, the downtown Cairo café was further described as a haven for "Satan worshippers" (Mada Masr 2014).

Policing Belief, Managing Sectarian Relations

A corollary to Egypt's religious revival and the corresponding Islamization of public space and discourse has been a marked deterioration in sectarian relations and a rise in sectarian conflict and violence. For Egypt's Christian minority, comprising approximately 10 percent of the country's population, this situation has only grown direr as the country's political transition has faltered and the specter of militancy has grown. As political polarization has increased, tightly policing sectarian relations and the boundaries of belief have come to be understood as necessary steps to preserving social cohesion and stability.

Two areas of the law highlight the ways in which concepts of the public order have become inextricably intertwined with the policing of belief and the managing of sectarian relations: defamation and conversion. In each of these areas, individual rights have been sacrificed in the name of social order—a pattern that further reflects the internalization of sectarian bigotry in state administration and criminal justice.

With respect to conversion, the Egyptian state has long reflected widely held societal biases and prejudices, as exemplified by the disparate treatment of cases of conversion or attempted conversion. In more recent years, even the issue of conversion from Christianity to Islam, long deemed an acceptable practice, has become an issue of state focus as authorities have at times

sought to deter the practice for fear of communal tensions and violence. In recent years, particularly in respect to the conversion of women, authorities have been faced with official church complaints regarding forced conversions and kidnapping. Regardless of the veracity of these claims, underlying this more recent official concern is the fear of communal strife.

However, official efforts to curb Christian-to-Muslim conversion are not the norm, whereas the consistency of state refusal to grant Muslim-to-Christian conversion reflects state policy. Furthermore, this refusal

extends to persons who were born Christian, became Muslim for a time, and wish to convert back to Christianity, as well as persons who were involuntarily “converted” to Islam, usually as a result of a father having converted to Islam. (Human Rights Watch and Egyptian Initiative for Personal Rights 2007, 20)

Such refusals are rooted in both rejection of the practice of Muslim-to-Christian conversion and distinct notions of public order. Due to the social stigma and legal exposure associated with this form of conversion, the numbers of individuals who have sought official recognition through the state have been quite small (Human Rights Watch and Egyptian Initiative for Personal Rights 2007).

While the jurisprudence on this issue has been somewhat mixed, Egyptian courts have overwhelmingly rejected this form of conversion on the basis that such actions are apostasy and in contravention of the public order in a Muslim-majority country governed by *shari'a*. In those rare and documented instances when individuals have publicly proclaimed their conversion to Christianity, the authorities have at times resorted to arrest explicitly premised on the preservation of public order (Human Rights Watch and Egyptian Initiative for Personal Rights 2007).

Hovering over the legal disputes is the omnipresent specter of communal violence, further stiffening official attachment to notions of public order. In March 2013, for example, an angry mob surrounded a church in Kom Ombo

based upon a rumor that a local woman had converted to Christianity and sought shelter within the church (Reuters 2013). In keeping with customary practice, such outbursts that lead to violent retaliation against Christian communities are systematically ignored and not pursued by the authorities.

Religious defamation and blasphemy cases, which have been a consistent feature of the Egyptian legal landscape in previous years, spiked after the fall of Mubarak and during the short-lived era of Muslim Brotherhood ascendancy. Importantly, such cases continue today, reflecting administrative and societal proclivities that are independent of Islamist political authority. Also notable is the fact that defamation cases have not solely focused on minority populations, although they are disproportionately represented, but have also targeted Sunni citizens. In August 2014, the Egyptian Initiative for Personal Rights released a report documenting 36 cases of religious defamation since the January 25 uprising (Egyptian Initiative for Personal Rights, 2014). Those cases involved 63 citizens, 26 of whom were Christians; 36 of whom were Muslim, with 26 Sunni Muslims and 10 Shia Muslims; and 1 Ahmadi (Egyptian Initiative for Personal Rights, 2014). In only one instance, the authorities brought forward a case for defamation of Christianity in connection to the inflammatory rhetoric and actions of a prominent Salafi sheikh. These cases of defamation of Islam rested upon a charge that such actions defamed or blasphemed Islam, showed contempt for its adherents, and “orally propagate[ed] extremist ideas with intent to inflame civil strife” (Egyptian Initiative for Personal Rights 2014, 11).

The procedures for such accusations and arrests suggest that mere allegation with little to no supporting evidence is sufficient for detention, a result that hinges not just on social mores but also due to fears of sectarian violence. Relatedly, the Egyptian Initiative for Personal Rights (2014) documented 11 cases in which those accused of defamation were expelled and evicted from their place of residence, including an instance in which a family of 21 was expelled from their village in Minya governorate.

Conclusion

The Egyptian state has over-employed a wide-ranging and repressive conception of the public order, and has utilized such expansive notions to limit a wide variety of individual rights. Such practice was not solely tied to the short period of recent and truncated Islamist ascendance, but represents a much more deeply rooted phenomenon that implicates the country's

enduring statist beliefs. While such efforts have often targeted the realm of religion and belief, such notions have also seen application in other areas in which the public order has been perceived to be at risk. With Egypt experiencing resurgence in statism, demagogic politics, and persistent instability, it is inevitable that notions of the public order will predominate over individual rights for the foreseeable future. ❖

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