

Drifting Power Relations in the Egyptian Constitution: The 2019 Amendments

by Gianluca Paolo Parolin

Abstract: Just five years after its coming into force, the 2014 Constitution of Egypt has been amended to accommodate changing power relations in the country. Arguably, citizens had little appetite for yet another round of amendments after the three years of tumultuous constitutional transition that followed the 2011 Revolution. Renegotiating the status and role of the Presidency, the Judiciary, the Legislative, and the Armed Forces was at the heart of the amendment process. The institutions traditionally limiting the executive seem to recede, while the President and the Armed Forces entrench their respective positions, seemingly posturing as a relative counter-power.

Keywords: Presidential Terms; Bicameralism; Judicial Independence; Armed Forces; Egypt.

3175

1. Introduction¹

Over the past few decades, scholarship on Egypt has regularly been intent on explaining why certain constitutional amendments were not the great democratic achievement that the official propaganda invariably portrayed them to be, usually with much fanfare. In the case of the 2019 Amendments, the effort to portray them as a democratic achievement was minimal.² No need to take the mask down. What I suggest, in turn, is to interrogate this amendment package on what its overall tone and its individual provisions can reveal about the power struggles that precipitated them, and the system that they will engender. At the risk of spoiling the read, I can anticipate that behind these amendments lies a system that is significantly less monolithic than expected.

The amendments were initiated in February 2019, quickly approved by mid-April, and the required popular referendum was squeezed in a few days later, just before the beginning of the Ramadan celebrations. No grand arguments were put forward to motivate the amendments: in a matter-of-fact manner, this was what

¹ I mark the difference between the formal and the colloquial register of Egyptian Arabic through different romanisation styles. I romanise the formal register according to the formal register of romanisation of Modern Standard Arabic (*IJMES*), whereas I romanise the colloquial register according to an adapted version of the Badawi-Hinds, *A Dictionary of Egyptian Arabic*, Beirut: Librairie du Liban, 1986. Colloquial register romanisations are preceded by an asterisk.

² State-controlled media often cited 'extreme' proposals to illustrate how moderate the proposed amendments were. In reporting on the discussions in the Constitutional Affairs Committee in Parliament, *al-Ahrām*—the main and oldest state-controlled newspaper—cites 'requests for a fully appointed Senate, and disagreements over quotas for women.' See *al-Ahrām*, 12 April 2019, 6.

the situation required.³ Discussion was stifled.⁴ Yet, negotiations had happened and kept happening as the amendments followed their course in Parliament—even if negotiations did not seem to be happening in Parliament itself. President, MPs, army, judges, all had their gazes firmly set on their different targets. An unprecedented top-down mobilisation brought a considerable number of citizens to the polls, and the amendments were approved by a large majority of the popular vote. The day after the referendum, all the support banners which filled the public space were removed: an attempt at erasing the memory of a dark page and all its commotion.

2. The Amending Process

The procedure to amend the 2014 Constitution is regulated in its art. 226, which largely reproduces previous provisions (namely: artt. 217 and 218 of the 2012 Constitution, and art. 189 of the 1971 Constitution). Art. 226 includes regulations on who is entitled to initiate the process, the sequence of readings and required majorities in the parliamentary debates, and the final popular vote on the amendments. Unlike previous provisions, however, art. 226 also includes a list of two areas in which amendments cannot be proposed.

In its current incarnation, the process can be initiated by the President, or by a fifth of MPs. A request needs to be put forward to the House, and the initiators need to specify which article(s) they are seeking to amend, and for what reasons. Within 30 days from the request, the House must decide by majority to accept it, in full or in part. If the request is rejected, a new request cannot be filed until the beginning of a new session of the House. If the request is accepted, however, the House has 60 days to discuss the amendments. If a super-majority of two-thirds then agrees on the amendments, the amendments are subsequently put to a referendum within 30 days. If, among the valid votes in the referendum, the ones in favour are more than the votes against, the amendments become effective as soon as results are announced.

The 2019 Amendments were proposed by MPs (155, more than the required fifth) on 2 February, and the House produced its first report on 5 February. On 14 February, the House approved the request by a large majority (485 out of 595). On 15 April, the House approved the amendments by a majority largely exceeding

³ See the memorandum accompanying the amendment request that initiated the process, dated 3 February 2019. Occasionally, state-controlled media would reference the need to let the President ‘complete the development plans, and the building of the state (sic!)’ (*li-istikmāl kḥuṭaṭ al-tanmiya wa-binā’ al-dawla*). See *al-Ahrām*, 12 April 2019, 6.

⁴ The discussion of the amendments rarely made the front headline of state-controlled newspapers and magazines, and the unofficial ban on engaging with the amendments—usually simply referred to as: *al-ḥazr*, the ban—meant that of all the opinion pieces appearing daily in the papers, no single one would dare discuss them. *Al-Dīmuqrāṭiyya*, the journal published by *al-Ahrām* and dedicated to ‘current issues and democracy,’ came out with a special issue on representative democracy without a single reference to the imminent re-introduction of a second chamber in the country. See *al-Dīmuqrāṭiyya*, no 74, April 2019. Even more ‘critical’ elite newspapers, like *al-Shurūq*, interviewed only senior parliamentary figures. See *al-Shurūq*, 12 April 2019, 4.

the required two thirds (531 out of 595; 554 present). Five days later, the polls opened for three days (20-22 April), and the following day (23 April) the National Elections Authority announced that 23,416,741 votes were cast in favour of the amendments (nearing 89 percent of the valid votes).

The constitutional practice in the country allows the final text voted on by the House to differ from the text of the amendment request which triggers the process. During the eight weeks of the discussion, various formulations were thus leaked and discussed, and it was not until the final vote in the House that voters could get an idea of the final text. While a process of ‘societal dialogue’ (*al-ḥiwār al-mujtamaʿī*) was being publicly run the by the Speaker of the House (‘Alī ‘Abd al-‘Āl) and reasonably covered by the press, these various formulations leaked and discussed appeared as an outcome of negotiations that were happening far from where the public debate on the amendments was staged.

Discussion in the press and in other state-controlled media was extremely limited. Even the coverage of the ‘societal dialogue’ was minimal and lopsided. Muṣṭafá Kāmil al-Sayyid, professor of Political Science at Cairo University, denounced in particular how the ‘national press’ (*al-ṣuḥuf al-qawmiyya*, an expression used to refer to the state-funded and controlled printed media) reported only the Speaker’s response to his comments, and not his comments.⁵

Hardly any columnist engaged with the amendments, and constitutional law experts were rarely interviewed. Compared with the overflow of media coverage of the constitution making process (both in 2012 and 2014), the deterioration is dramatic.

As mentioned earlier, art. 226 differs from earlier provisions on constitutional amendments in that it also expressly lists two areas in which amendments cannot be proposed: (1) the articles related to the re-election of the President, and (2) the principles of liberty and equality, unless such amendments offer more guarantees (art. 226, last para). Among the 2019 Amendments, amending the core provision on presidential terms (art. 140) and introducing a temporary clause on their application to the serving President could have been easily construed as in breach of art. 226, last para, but they were not.

3. The 2019 Amendments

The 2019 Amendments affect a number of diverse constitutional provisions in a way that seems to suggest that the main motive behind them was to renegotiate the position of the presidency. It is not just a story of entrenching presidential privilege, though.⁶ In fact, while presidential powers increase at the expense of the legislative and the judiciary, they retreat in front of the Armed Forces, who secure permanent control over the Ministry of Defense and an explicit recognition of

⁵ Coverage only appeared in the English language publication of al-Ahrām as: ‘Opposing Views,’ in *Al-Ahrām Weekly*, 4-10 April 2019, p. 3.

⁶ Even if often narrated along these lines. See T. Kaldas, *Taking Dictatorship from De Facto to De Jure: Egypt’s Constitutional Amendments*, on *Constitutionnet*, 1 May 2019 (last accessed: 29 May 2019).

their role in the country's constitutional order. Further pushbacks against presidential entrenchment surfaced even during the process. One of the few provisions that was not approved in the form originally proposed by the group of 155 MPs was the most divisive issue: the change in length and number of terms a President may serve. While the extension from 4 to 6 years was not contested (art. 140), its application to the incumbent through a temporary clause is what attracted attention and witnessed various iterations before the final vote (art. 241-bis).

3.1. *The Rationale*

Less than a decade after the 2011 Revolution, but two Constitutions (2012 and 2014) and countless constitutional declarations later, there truly seemed not to be much appetite in the wider public to revisit the constitutional debate. The narrative proposed by the 155 MPs who signed the amendment request speaks in part to Elster's paradox of constitution-making (constitutions are generally drafted during turbulent times, hence in the least conducive environment to thoughtful collective deliberation), and in part to a 'natural' fine-tuning of the text required after five years from its introduction. The signatories characterise the call for constitutional amendments as one of the main triggers of the 2013 Revolution (in the official narrative, the 25 January 2011 Revolution that forced the ousting of President Mubārak was followed by the 30 June 2013 Revolution that brought about the ousting of President Mursī, and in the text they are referred as the two Revolutions, *al-Thawratayn*). After mentioning the two different committees that re-drafted the text of the 2012 Constitution, which was eventually approved as the 2014 Constitution, the signatories cite the critical situation that the country is in (*al-tadā'iyāt al-ḥarija*), and the priority to save the state and prevent any repetition of the same scenario (*awlawayyāt inqādh al-dawla wa-man 'ayy iḥtimāliyya li-tikrār asbāb al-azma*).

The Speaker of the House, the institutional figure who chaperoned the amendment process, spent a significant amount of airtime contending that the Constitution is a living document and hence requires continuous adjustments. The Speaker had an uphill battle to fight, as the public was wary of constitutional amendments introduced to serve incumbents. The memory of previous constitutional amendments was actualised in social media, and recast through the evocative expression: 'the constitution's curse' (**la 'nit id-dustūr*), pointing to what previous Presidents who amended the Constitution brought upon themselves. In 1981, just over a year after the 1980 Amendments, President al-Sādāt was assassinated, and in 2011 President Mubārak was forced to step down a few years after the controversial amendments of 2005 and 2007.

3.2. *The Presidential Terms*

At the heart of the public debate was the proposed change in length and number of terms a President may serve (art. 140). A debate which was stifled by informal directives to state-controlled media not to allow any engaging with the constitutional amendments, and thus confining coverage to a bare minimum,

generally on the process and through the words of its chaperon, the Speaker. The proposed changes to art. 140 touched upon the length of presidential terms of office (raising it from 4 to 6 years), and their number (the 2014 text strictly allowed for only one further term, while the proposed text limited the restriction to two consecutive terms, thus opening the door to further terms after sitting one term out). The text was approved as proposed, disregarding the express prohibition of art. 226 to amend under any circumstance (*wa-fi jamī' al-aḥwāl..*) the provisions on the number of terms a President may serve (*i'ādat intikhāb Ra'īs al-Jumhūriyya*).

What significantly changed from the proposed formulation to the approved text is the wording of the temporary clause, which originally provided for the incumbent to be able, at the end of his current term, to run again according to the new text of art. 140. This was widely read as allowing al-Sīsī to stay in office until 2034, since his second term would come to an end in 2022, at which point he would have had the option to kick-start the operation of the new art. 140 and thus run for two additional six-year terms. The constitutional practice in the country would have allowed for such a construction of the amending process as, in a way, zeroing on what happened before the introduction of the new clause (the most widely known precedent here is the provision on the role of the principles of Islamic law as the main source of legislation, art. 2 of the 1971 Constitution as amended in 1980, which, notoriously, apply only to legislation passed after the coming into force of the amendment in 1980). Half-way through the process, however, a different solution was advanced: applying retrospectively the length extension from 4 to 6 years to al-Sīsī's existing terms (the one already completed, and the current one). This would have meant to keep him in office until—at least—2026 without any need for further elections. Unlike the previous solution, this ran contrary to the general understanding of legal principles in the country: acts (or terms) cannot be retroactively extended after their completion. In this case, more problematic was the idea to add the two extra years of the incumbent's first term in office (2014-2018) to his current second term (2018-2022), itself extended by two extra years (less problematic). Eventually, the approved temporary clause offers a mid-ground solution: two years will be added to the current term, and in 2024 al-Sīsī will be allowed to run for a further term, thus potentially keeping him in office until 2030 (art. 241-bis).

3.3. The Legislative

The largest bloc of amendments pertains to provisions on the legislative. This includes a subset of amendments guaranteeing quotas to underrepresented constituencies in the House of Representatives (Majlis al-Nuwwāb), and the surprising re-introduction of an upper house, this time called the Senate (Majlis al-Shuyūkh).

Quotas for underrepresented constituencies had been regulated by statute (Law no 46 of 2014) after the coming into force of the 2014 Constitution, and all quotas had a specific reference clause in the Constitution itself, with the notable exception of the quota for women (for which the statutory provision had no

constitutional backing).⁷ Both the Constitution and the Law specified that those provisions only applied to the first elections to the House of Representatives—the ones held in 2015. The 2019 Amendments made quotas a permanent fixture of the lower house, by removing the said limitation to the first parliamentary elections after the coming into force of the Constitution. In the case of women, amendments went one step further and set the minimum overall female representation in the House of Representatives to one fourth (art. 102, para 1). The other constituencies who have been guaranteed ‘appropriate representation’ (*tamthīl^{an} mulā’im^{an}*) are ‘workers and peasants’ (*al-‘ummāl wa-l-fallāhīn*, art. 243), and ‘youth, Christians, persons with disabilities, and Egyptians residing overseas’ (*al-shabāb, wa-l-masāhiyyīn, wa-l-ashkhāṣ dhawī al-i‘āqa, wa-l-miṣriyyīn al-muqīmīn fī al-khārij*, art. 244). Definitions for all these constituencies are provided for in the Law no 46 of 2014 (art. 2). Historically, quotas for ‘workers and farmers’ were introduced as early as the mid-1960s, but in practice misusing the qualification as worker or peasant had become with time a widespread, institutional phenomenon. As a result, mostly nominal ‘workers and peasants’ were allowed to control large numbers of seats in Parliament, thus turning the quota into a popular shorthand for the hypocrisy of parliamentary representation, and undermined the credibility of the institution as a whole. For a long time, ‘workers and peasants’ had been the only existing quota, and were used as a proxy by the presidency to control the legislative. Thus, the popular belief is that all quotas will play a similar role to the ‘mother of all quotas’: workers and farmers.

The re-introduction of a widely unpopular upper house contributed to the perception that the presidency intended to rein in the already largely enfeebled legislative. The 2014 Constitution had opted for unicameralism and the abolition of the tainted Consultative Council (Majlis al-Shūrā), but the 2019 Amendments brought back bicameralism and an upper house, albeit under a new name (Majlis al-Shuyūkh). Renamed after the French and American upper houses, the new Majlis al-Shuyūkh (Senate) is however a partly elected (2/3s), partly appointed body (1/3) (art. 250). When comparing the provisions on the Consultative Council in the 1980 amendments, and the ones on the Senate in the 2019 Amendments, one is soon brought to realise that renaming the upper house was probably the most radical departure from the old regulations. The other major departure is that now the terms of office of both houses are the same (5 years), whereas in the 1971 Constitution (as amended in 1980) the Consultive Council was in office for 6 years, and the House of Representatives for five.

In terms of the new upper house’s jurisdiction, the 2019 Amendments turned the clock back to when the Majlis al-Shūrā was introduced, in 1980. The parallels between the Amendments of 1980 and 2019 are striking. Just like in 2019, the 1980 Amendments—passed under the al-Sādāt administration—played with the limit of two presidential terms⁸ and created a consultative upper house (among a

⁷ The 2014 Constitution nonetheless obliged the state to take all measures required to ensure that women were properly represented in representative bodies (*tamthīl^{an} munāsib^{an} fī al-majālis al-niyābiyya*, art. 11).

⁸ In 1980, the limit of two consecutive terms was simply removed (art. 77).

few other things). The role of the upper house had remained consultative until 2007, when a new round of amendments—passed this time under the Mubārak administration—established that the Majlis al-Shūrā's role was prescriptive on a number of issues (art. 194 as amended in 2007).⁹ After the 2019 Amendments, the new Senate will be a consultative body with jurisdiction over the reshuffled list of the 1980 areas of jurisdiction. These include: (1) proposals to amend one or more articles of the Constitution, (2) drafts of the general plan for social and economic development, (3) peace and alliance treaties and all treaties which concern its sovereign rights,¹⁰ (4) [ordinary] draft laws, and draft laws designed to implement certain constitutional provisions referred to the Senate by the President of the Republic or the House of Representatives, (5) whatever matters are referred to the Senate by the President of the Republic relating to the general policy of the State or its policy regarding Arab or foreign affairs (art. 249). The Senate will play no role in the legislative process, the budget approval, or holding the executive accountable (art. 254).¹¹ The first elections to choose the elected members of the new Majlis al-Shuyūkh were held in August 2020, with run-offs in September 2020. Voter turnout was extremely low.

3.4. *The Judiciary*

Another large bloc of amendments pertains to provisions on the judiciary. Judges are unquestionably the ones suffering the most significant setbacks in the 2019 Amendments. The original provisions in the 2014 Constitution signalled that the judiciary had obtained a status comparable to that of other key institutions, like the Armed Forces. Even symbolically, the judiciary was recognised a large degree of self-rule, in that it had control—like the Armed Forces—of its budget (which was included in the general budget as a single figure), and it had to be consulted on any draft law affecting its status (art. 185, 2014 Constitution). The tide started turning in 2017, when a statute introduced presidential discretion in the appointment of senior judicial figures (Law no 13 of 2017). The law met with strong resistance among the judges, and a case was filed in front of the Supreme Constitutional Court (SCC).¹² The 2019 Amendments made presidential discretion in the appointment of all top judicial posts a constitutional matter, thus preventing the SCC to rule on the case filed against Law no 13 of 2017. Besides introducing the principle of discretionary presidential appointment (and promotion, and

⁹ See N. Bernard-Maugiron, *The 2007 Constitutional Amendments in Egypt, and Their Implications on the Balance of Power*, in *Arab Law Quarterly*, 22(4), 2008, 397-417.

¹⁰ In the 2019 provision, the expression “treaties which affect the territorial integrity of the State” was removed. Given the extremely divisive institutional politics that surrounded the transfer of the Red Sea islands of Tīrān and Ṣanāfir to Saudi Arabia in 2017, the omission would seem to suggest that the appreciation of the new Senate is quite ambivalent. Would it have eased or hampered the presidential decision?

¹¹ Art. 254 explicitly lists the provisions of the House of Representatives that apply to the Senate, and leaves out the bloc or articles 122-131 that relate to the legislative process, the budget approval, or holding the executive accountable

¹² Y. ‘Awf, *Ma ‘rakat ta ‘yīn ru ‘asā’ al-sulṭa al-qadā’iyya fī Miṣr*, in *Ṣadā*, 16 January 2018. Available at: carnegieendowment.org/sada (Last accessed on 25 April 2019).

disciplinary action) of senior judicial figures, the 2019 Amendments also removed most of the institutional privileges included in the 2014 Constitution, and reduced the jurisdiction of the ‘unruly’ Council of State (Majlis al-Dawla)—historically, the most vocal judicial body, and the one that had put up the strongest opposition to Law no 13 of 2017.

Besides appointing all court presidents, the President now oversees all ‘shared matters’ of judges by chairing and appointing most of the members of a newly introduced Supreme Council of Judicial Authorities (al-Majlis al-A‘lá li-l-Jihāt wa-l-Hay‘āt al-Qaḍā’iyya, art. 185, para. 3).¹³ This is the body which will have jurisdiction over the conditions of appointment, promotion and disciplinary action against members of the judiciary. The body decides by majority voting, provided the majority includes the chair (the President, art. 185, para 5). The General public prosecutor and the President of the Supreme Constitutional Court are now both directly appointed by the President, who chooses among candidates selected by the Supreme Judicial Council (al-Majlis al-A‘lá li-l-Qaḍā’) or among the oldest five vice-Presidents respectively (art. 189 and art. 193).

The Council of State was stripped of its exclusive jurisdiction over legal opinions on all matters legal for State agencies (*wahdah* was removed from the text, art. 190), is no longer charged with the drafting of draft bills (just their review, art. 190), and no longer reviews all public procurements (only the public procurements identified by law, and of a value equally set by law, art. 190).

3.5. The Armed Forces

The last bloc of amendments pertains to provisions on the Armed Forces. The army is the one political actor who comes out reinforced and unscathed from the 2019 Amendments. Firstly, it secures for itself the symbolic recognition as ‘the defender of the Constitution and democracy, just as the protector of the fundamental constituents of the state, its civil(ian?) nature, the (political) gains of the people, and the individual rights and freedoms’ (art. 200). Secondly, it expands the jurisdiction of its military courts (art. 204). Thirdly, it succeeds in establishing the principle that the army’s agreement (through its Supreme Council of the Armed Forces) on the appointment of the Minister of Defense is a permanent arrangement (art. 234). And finally, it introduces the office of the Vice-President (art. 150-bis).

The 2014 Constitution already included several provisions that secured a very special status for the Armed Forces within the state, but the narrative was symbolically kept to a conventional modicum: ‘The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories. The state is exclusively mandated to establish armed forces. No individual, entity, organisation or group is allowed to create military or para-

¹³ A first draft of the law regulating this Supreme Council was presented in Parliament in mid-May 2019, a month after the amendments were approved. This happened during Ramadan, which is a festive season in which the public’s attention is not focussed on parliamentary politics.

military structures, groups or organisations.’ (art. 200, first para). With the 2019 Amendments, the Armed Forces were symbolically assigned further functions within the operation of the constitutional order of the country: ‘defend the constitution and democracy, protect the fundamental constituents of the state, its civil(ian?) nature,¹⁴ the (political) gains of the people, and the individual rights and freedoms’ (art. 200, first para).

In the same spirit, the 2014 Constitution already carried an extensive list of cases in which military courts could claim jurisdiction over cases involving civilians in which the connection with the Armed Forces was tenuous at best. The 2019 Amendments, however, expand on those grounds by lowering the requirement of evidence of ‘direct assault’ (*i’tidā’ mubāshir*) to simple ‘assault’ (*i’tidā’*), and adding also any facilities which the Armed Forces simply undertook to protect: ‘civilians cannot stand trial before military courts except for crimes that represent an assault against military facilities, military barracks, or whatever falls under their authority, or any facilities which they undertook to protect; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties’ (art. 204, second para).

The constitutional practice of appointing an army official to the governmental post of Minister of Defense had already been sanctioned by the 2012 Constitution. In 2014, the new Constitution further stipulated that the Minister of Defense had to be appointed upon the approval of the Supreme Council of the Armed Forces. The provision, however, was temporary, and was explicitly expected to remain in force only for two full presidential terms (art. 234). The temporal limit has however been removed by the 2019 Amendments, and has thus become a fixture of the constitutional system. The appointment of the Minister of Defense needs to be cleared by the Armed Forces.

Why would the introduction of a Vice-President be counted as a gain for the army, though? The reasons for doing so are largely historical, but let me begin by underlining that it can only be considered a half-gain, since the President is under no constitutional obligation—until now—to appoint a Vice-President (art. 150-bis). Since the 1952 Revolution and the overthrow of the monarchy, all of Egypt’s Presidents have hailed from the Armed Forces (with the exception of President Mursī). And they all resisted the appointment of Vice-Presidents as a potential threat to their rule. During the 2011 Uprising, President Mubārak eventually ended the 30-year vacancy when he appointed ‘Umar Sulaymān as Vice-President in a last, desperate attempt to convince the army that he was willing to enter into a new power-sharing agreement. The 2019 Amendments stipulate that the President can appoint one or more Vice-Presidents, define their jurisdiction, delegate some areas under presidential jurisdiction to them, and relieve them from

¹⁴ *Madaniyyat al-Dawla* can either refer to its ‘civil’ nature in opposition to a religious one, or its ‘civilian’ nature in opposition to a military one. *Madaniyya*, just like civil and civilian, is built on the idea of ‘city’ (*madīna/civitas*).

office or accept their resignation (art. 150-bis). A President's concerns that a Vice-President may unseat them is addressed in the amendments. In case of a President's temporary impediments, the Vice-President or the Prime Minister fill their position (art. 160, first para), but the 2019 Amendments explicitly state that whoever temporarily fills the President's position cannot initiate constitutional amendments, dissolve either house of Parliament, or dismiss the Government (art. 160, last para).

4. The Referendum

The use and abuse of referenda has been a fixture of the Egyptian constitutional landscape since the 1952 Revolution. In an earlier issue of this journal, I traced the genealogy and historical trajectory of referenda in Egypt since their introduction.¹⁵ Referenda were introduced with the 1956 Constitution as an instrument that the President could wield to overcome possible resistance by traditional political forces considered monarchist holdovers. As such, it had been widely employed, and kept being employed even after traditional political forces were annihilated. Considering the general trends in turnout and approval rates adds a further layer to the appreciation of the use and abuse of referenda in Egypt, beyond the genealogy of the constitutional provisions requiring a referendum. In the aftermath of the 2011 Revolution, turnout and approval rates were pointing to an opening of the political space for debate, campaigning and disagreement (to the point that the draft 2012 Constitution was defeated in the referendum in three Governorates, including Cairo). Data reverted to pre-2011 figures after 2013, as the approval rate in the referendum on the approval of the 2014 Constitution jumped back to the high 90s (98.1%).

The referendum on the 2019 Amendments was announced and held but a few days after the final vote in Parliament (16 April 2019). Egyptian citizens overseas voted 19–21 April 2019, while residents voted 20–22 April 2019. The National Elections Authority (*al-Hay'a al-Waṭaniyya li-l-Intikhābāt*) came under fire for having started preparations for the referendum before the final vote on the amendments. The Authority denied such allegations, but calling and holding a referendum for more than 61 million voters within a matter of days suggests that some preparation had indeed taken place before the final vote in Parliament.

The Authority prevented local branches to announce local results. Instead, it communicated single figures for the entire country (without even differentiating between votes cast in Egypt or overseas). Of the 61,344,503 citizens with franchise, 27,193,593 turned out to vote (44.3%). Of the 26,362,421 valid votes, 23,416,741 were votes in favour of the amendments (88.8%), and 2,954,680 were votes against (11.2%). Given the unofficial ban on discussing the amendments, the extremely short notice between the final approval by Parliament and the

¹⁵ G. Parolin, *Il Referendum in Egitto tra Rivoluzione e Ricostruzione*, in *Diritto Pubblico Comparato ed Europeo*, 2014 (4), 1801–1812.

referendum, and the absence of a campaign for or against the amendments,¹⁶ it is quite striking that the figures for turnout (44.3%) and votes against (11.2%) were so high. The reasons thus need to be sought elsewhere.

Comparatively, a turnout figure at 44.3%¹⁷ in a referendum had not been recorded since the 2005 Amendments, which scored a 53.6% turnout.¹⁸ Turnout figures were low for the controversial 2007 Amendments (the last amendments under the Mubārak administration, 27.1%),¹⁹ but also for the 2011 Amendments (the first amendments after the 2011 Revolution, 41.2%).²⁰ These were the last referenda to be held on a single day. From 2011 polling stations for referenda stay open for several days. Yet, the turnout figure for the 2012 Constitution lingered at a 32.9%,²¹ and the one for the 2014 Constitution at 38.6%.²² Social media, the few, underground human rights activists remaining, and the last independent news platform exposed how large numbers of voters were either buoyed or forced into voting.²³

The high figure of votes against is also a comparatively meaningful datum. In the 2000s, the Mubārak administration had started showing little interest in continuing with the tradition of referenda known as the *khamisa tis 'āt* ('five nines,' capturing the usual figure of 99.999% votes in favour). The 2005 and 2007 referenda had thus started showing an increase in the numbers of votes against. The trend continued in 2011, and it peaked in 2012, when the referendum on the 2012 Constitution was voted down in the capital and other two Governorates, with an overall figure of votes against at 36.2%. The referendum on the 2014 Constitution had somehow reversed the trend putting votes against back to a single digit (1.9%, 98.1% in favour). The 2019 Amendments saw a surprising 11.2% figure of votes against. Surprising because no open campaigning for it was tolerated, and the informal opposition to the constitutional amendments was divided between voting against, voiding the ballot, or boycotting altogether. In

¹⁶ The massive campaign in favour of the 2019 Amendments, championed by a previously unknown *I'mil al-Ṣaḥḥ* Campaign ('Do the Right Thing'), was actually often content just to emphasise the duty to participate (*al-mushāraka*, *mas 'ūliyya* ('participating means being responsible'), **shārik*, *'ūl ra 'yak* ('participate, say your opinion') etc.), and generally stopped short of explicitly backing the 'yes.' It was somehow 'understood.' Some read the hand gesture in *I'mil al-Ṣaḥḥ*'s logo as a reference to 'yes.' A proper campaign to support the reasons of the amendments never really kicked off. A strong campaign against, *Bāṭil* ('Void'), was suffocated and 34,000 internet domains were almost instantly blocked. 'Taqrīr: Ḥajb akthar min 34 alf mawqī' khilāl muḥāwalat ghalq Bāṭil' (unsigned), in *Madā Miṣr*, 16 April 2019. Available (outside of Egypt) at: www.madamasr.com (Last accessed: 25 April 2019).

¹⁷ 27,193,593 votes.

¹⁸ 17,184,302 votes.

¹⁹ 9,701,833 votes.

²⁰ 18,537,954 votes.

²¹ 17,058,317 votes.

²² 20,613,677 votes.

²³ See the full coverage by *Madā Miṣr*, recipient of the 2019 Free Media Pioneer Award of the International Press Institute and the International Press Support. The full coverage is available (outside of Egypt) at: www.madamasr.com (Last accessed: 4 June 2019). The traditional forms were not entirely dismissed; state-controlled media, for instance, reported opinions of senior religious scholars from al-Azhar stating that 'participating' is a (religious) obligation (*wājib*). See *al-Ahrām*, 12 April 2019, 6.

the state-controlled media, no engagement—not even in favour—with the amendments was allowed. Cairo was plastered with posters supporting participation (and (mostly) implicitly voting in favour), whereas only a few, token posters against the amendments were ‘out for the show.’

5. Conclusions

Hasty and careless changes to the constitution, voted in a hurry through Parliament and then shoved down the citizens’ throats have a shorthand expression in Egyptian colloquial Arabic: **sal’ id-dustūr*. The expression is an adaptation of **sal’i bēd*, literally: hard-boiling an egg, which the Badawi-Hinds Dictionary defines as: ‘a hasty slapdash job.’ Egyptian citizens are thus unfortunately used to this approach to constitutional matters, and having an expression for it helps them to immediately spot the operation. The 2019 Amendments were no exception. In fact, matters have been aggravated by the amount of visual pollution generated by the *I’mil al-Ṣaḥḥ* Campaign to support the amendments,²⁴ the ban on any meaningful engagement on the content of the amendments in state-controlled media, the rush to pass and vote the amendments before the beginning of Ramadan,²⁵ and the mix of coercive and persuasive means employed to get citizens to the polls.

The 2019 Amendments have been largely perceived as the triumph of the Presidency over all other institutions. A closer look suggests a more nuanced reading. Undoubtedly, the President extends their control over the legislative, and entrenches their discretionary powers on the judiciary. But recedes in front of the Armed Forces, who retain their right to appoint the Ministry of Defense, expand the jurisdiction of their courts, are symbolically defined as defender of the Constitution and democracy, and also start introducing the idea that a Vice-President will have to be appointed.

Gianluca Paolo Parolin

Institute for the Study of Muslim Civilisations
Tha Aga Khan University (London)
gianluca.parolin@aku.edu

²⁴ Madá Miṣr reported on how police officers organised the collection of money, the printing of posters, putting them up, and taking them down for a group of commercial activities in the districts of al-Sawāḥ and al-Maṭariyya in North-East Cairo. *Bi-l-“Jabr”.. lāfitāt al-akshāk wa-l-maḥallāt tu’ayyid al-ta’dilāt al-dustūriyya* (unsigned), in *Madá Miṣr*, 16 April 2019. Available (outside of Egypt) at: www.madamasr.com (Last accessed: 25 April 2019).

²⁵ The approval was rushed because until the end of March the Parliament had not yet even formed a committee to look into the proposed amendments. *Al-Miṣrī al-Yawm*, 31 March 2019, front page.

Appendix

Table comparing the 2014 Constitution and the 2019 Amendments

	2014	2019
	The Presidency	
art. 140, para 1	The President of the Republic is elected for a period of four calendar years, commencing on the day the term of his predecessor ends. The President may only be re-elected once.	The President of the Republic is elected for a period of six calendar years, commencing on the day the term of his predecessor ends. The President cannot serve for more than two consecutive terms.
art. 241-bis	—	The current term ends after six years from the date of the announcement of the elections as President of the Republic in 2018, and he can be re-elected for another term.
	The Legislative	
art. 102, para 1	The House of Representatives is composed of no less than four hundred and fifty members elected by direct, secret public balloting.	The House of Representatives is composed of no less than four hundred and fifty members elected by direct, secret public balloting; no less than a fourth of the overall number of seats is reserved to women.
art. 102, para 3	Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates and equal representation of voters. The majoritarian system, proportional list, or a mixed system of any ratio may be used.	Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates and equal representation of voters . The majoritarian system, proportional list, or a mixed system of any ratio may be used.
art. 244-bis	—	The amended provision of art. 102, para 1, will apply to the legislative session following the current one.
art. 243	The state grants workers and farmers appropriate representation in the first House of Representatives to be elected after this Constitution is adopted, in the manner specified by law.	The state grants workers and farmers appropriate representation in the first House of Representatives to be elected after this Constitution is adopted , in the manner specified by law.
art. 244	The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation in the first House of Representatives to be elected after this Constitution is adopted, in the manner specified by law.	The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation in the first House of Representatives to be elected after this Constitution is adopted , in the manner specified by law.
art. 248	—	The Senate has the authority to study and propose what it deems suitable to embed the fundamentals of democracy, the promotion of social peace, the basic elements of society and its supreme values, rights, freedoms and public duties, and the deepening and expansion of the democratic system.
art. 249	—	The opinion of the Senate is taken on the following:

		<ul style="list-style-type: none"> - proposals for the amendment of one or more articles of the Constitution. - the draft general plan for social and economic development. - treaties of peace and alliance and all treaties relating to the rights of sovereignty. - (ordinary) draft laws and draft laws supplementing the constitution which are referred to the Senate by the President of the Republic or the House of Representatives. - matters referred to the Senate by the President of the Republic regarding the general policy of the state or its policy on Arab or foreign affairs. <p>The Senate on all these matters informs the President and the House of Representatives on its opinion.</p>
art. 250	—	The law sets the number of senators, who cannot be less than 180; the Senate's term is five years, starting from its first session. The new Senate shall be elected within the 60 days preceding the expiry of the term of the previous Senate. Two thirds of the senators are elected in a secret, general, direct ballot, and the remaining third are appointed by the President of the Republic. The election and appointment of the senators is regulated by law.
art. 251	—	Senators, whether elected or appointed, must be Egyptian, enjoying their civil and political rights, in possession of a university degree or equivalent, and be at least 35 years old on the day of the opening of candidatures. The law regulates further requirements to run for a Senate seat, the electoral system and the division of the constituencies to take into consideration the equitable representation of the population and the governorates. Proportional representation or first-past-the-post, or a mixed system are all valid options.
art. 252	—	A Senate member cannot be a member of the House of Representatives at the same time.
art. 253	—	The Prime Minister, his Deputies, Ministers and other members of the Government shall not be held accountable to the Senate.
art. 254	—	The Senate is subject to the provisions to be found in artt. 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121 para 1 & 2, 132, 133, 136, and 137 of the Constitution, provided they do not conflict with provisions in this section, in accordance with the terms of reference of the Council and its President for the exercise of their functions.
	The Judiciary	
art. 185	All judicial bodies administer their own affairs. Each has an independent budget, whose items are all discussed by the House of Representatives. After approving each budget, it is incorporated in the state budget as a single figure, and their opinion is consulted on the draft laws governing their affairs.	<p>All judicial bodies administer their own affairs. Each has an independent budget, whose items are all discussed by the House of Representatives. After approving each budget, it is incorporated in the state budget as a single figure, and their opinion is consulted on the draft laws governing their affairs.</p> <p>The President of the Republic appoints the presidents of judicial authorities from among the</p>

		<p>seven most senior vice-presidents. Their term of office is four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career. And that according to the provisions of the law.</p> <p>In charge of all shared matters of the judiciary is a Supreme Council of Judicial Authorities, chaired by the President of the Republic, and composed of the President of the Supreme Constitutional Court, the Presidents of the judicial authorities, the President of the Appeals Court of Cairo, and the Public Prosecutor. The Council has a Secretary appointed by Decree of the President of the Republic for the period set by the law and rotating among the various member entities of the Council.</p> <p>Whoever the President of the Republic delegates among the Presidents of Judicial Authorities takes their place if they are absent.</p> <p>The Council has jurisdiction over conditions of appointment of members of judicial authorities, their promotion, and disciplinary actions. The Council is consulted on draft laws regulating the affairs of judicial authorities. Decisions are taken by a majority of members, provided it includes the vote of the Council's chair.</p>
art. 189, para 2	Public prosecution is carried out by a Prosecutor General who is selected by the Supreme Judicial Council from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals, by virtue of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career.	Public prosecution is carried out by a Prosecutor General appointed by Decree of the President of the Republic among three candidates put forward by the Supreme Council of the Judiciary from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals. by virtue of a presidential decree And that for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career.
art. 190	The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It is also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and decrees of a legislative character, and review draft contracts to which the state or any public entity is a party. Other competencies are to be determined by law.	The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions and the decisions of the disciplinary councils . It is also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and decrees of a legislative character, and review draft contracts identified by law, and of a value equally set by law to which the state or any public entity is a party. Other competencies are to be determined by law.
art. 193, para 3	The General Assembly chooses the Court's President from among the three most senior vice-presidents of the court. It also chooses the vice-presidents and the members of its Commissioners' Authority, who are appointed by a decree from the President of the Republic. The	The President of the Republic chooses the Court's President from among the five most senior three vice-presidents of the court. The President of the Republic also chooses the vice-presidents among two candidates: one put forward by the Court's General Assembly, and one put forward by the Court's President. And the President of the Commissioners' Authority and its members of its Commissioners Authority, who are appointed by a decree from the

	foregoing takes place in the manner defined by the law.	President of the Republic, upon recommendation from the Court's President, and after having heard the Court's General Assembly . The foregoing takes place in the manner defined by the law.
	The Army	
art. 150-bis	—	The President of the Republic can appoint one or more Vice-Presidents, define their jurisdiction, delegate some areas under presidential jurisdiction to them, and relieve them from office or accept their resignation. Vice-Presidents before assuming office take the oath according to art. 144 of the Constitution in front of the President of the Republic. Vice-Presidents are subject to the provisions to be found in artt. 141, 145, and 173 of the Constitution.
art. 160, para 1	If on account of a temporary impediment, the President of the Republic is rendered unable to carry out the presidential functions, the Prime Minister acts in his place.	If on account of a temporary impediment, the President of the Republic is rendered unable to carry out the presidential functions, the Vice-President or the Prime Minister, if there is no Vice-President or they cannot act , acts in his place.
art. 160, last para	The interim President is not allowed to run for this office, request any amendment to the Constitution, dissolve the House of Representatives or dismiss the government.	Whoever acts in place of the President of the Republic or the interim President is not allowed to run for this office, request any amendment to the Constitution, dissolve the House of Representatives or the Senate, or dismiss the government.
art. 200, para 1	The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories. The state is exclusively mandated to establish armed forces. No individual, entity, organization or group is allowed to create military or para-military structures, groups or organizations.	The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories; defend the constitution and democracy, protect the fundamental constituents of the state, its civil(ian?) nature, the (political) gains of the people, and the individual rights and freedoms . The state is exclusively mandated to establish armed forces. No individual, entity, organization or group is allowed to create military or para-military structures, groups or organizations.
art. 204, para 2	Civilians cannot stand trial before military courts except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.	Civilians cannot stand trial before military courts except for crimes that represent an direct assault against military facilities, military barracks, or whatever falls under their authority; or any facilities which they undertook to protect ; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.
art. 234	The Minister of Defense is appointed upon the approval of the Supreme Council of the Armed Forces. The provisions of this article shall remain in force for two full presidential terms starting from the date on which this Constitution comes into effect.	The Minister of Defense is appointed upon the approval of the Supreme Council of the Armed Forces. The provisions of this article shall remain in force for two full presidential terms starting from the date on which this Constitution comes into effect.