

THE DEVELOPMENT OF THE PRESIDENT'S AUTHORITIES IN THE EGYPTIAN CONSTITUTIONS

DR. KAREM SAYED ABOELAZM¹

Assistant Professor of Public Law, College of Law, Umm Al Quwain University, United Arab Emirates¹
Karem.s.aboelazm@gmail.com¹

Abstract - After the 25th of January 2011 revolution, the Egyptian people sought to obtain social justice by strengthening democracy and upholding the principle of the rule of law. This revolution directly impacted Egypt's constitutional and political events until the Muslim Brotherhood took over Egypt. From the realization of the principle of the rule of law and the promotion of democracy, the political problems and democratic crises increased in a way that detracted from the focus of the rule of law in an unprecedented manner until the situation became worse than it was before the revolution of January 2011. The problem continued from bad to worse for three years until the establishment of the June 2013 revolution, then the suspension of the constitution and the formation of a committee to write a new form for the country to strengthen and uphold the rule of law in the Egyptian state. Little by little, the Egyptian people voted for the record that note, and a new era began.

The new constitution has strengthened the principle of the rule of law through many of its articles, such as setting controls and guarantees for the trial of the head of state, equality between citizens, and the separation of powers in a way that ensures the realization of this principle, which in turn led to the production of many laws that help achieve the rule of law.

Keywords: *The Rule of Law, Constitution, Democracy, Unconstitutional Constitutional Amendments.*

Table of Contents

1. The Constitution Historical Background
2. The Concept of Rule of Law
3. Government Limited
 - 3.1. Kingship Era
 - 3.2. First Republic Era
 - 3.3. Second and Third Republic Era
4. Unconstitutional Constitutional Amendments


CONCLUSION

1. The Constitution Historical Background

Constitutional life in Egypt began in its modern form in 1923 when the first constitutional system for the Egyptian state was promulgated, which established the system of government¹. It has some guarantees, such as the principle of equality and non-discrimination based on religion, language, or origin, and many other rights and freedoms, such as freedom of the press, freedom of speech, and freedom of opinion and expression, that have been protected.

This system laid the foundations of constitutional rule in Egypt, which were represented in the provisions related to powers. They were divided into three elemental authorities: the king and the ministers, the Parliament, and the judiciary. The constitution established the system of monarchy, which fortifies the person of the king and centralizes the powers in his hand in a significant way, as it granted him many executive and legislative powers. He also possessed specializations that made him in control of Parliament and restricted his powers and disciplines, as he could postpone the convening of Parliament without approval. It has two chambers. It has dangerous jurisdiction over Parliament that enables it to control it directly to the point of dissolving Parliament without giving reasons.

¹ Aboelazm, K.S., (2021) 'The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries', Int. J. Public Law and Policy, Vol. 7, No. 3, p. 187.



In 1930, the 1923 constitution was abolished. A new form was introduced for the Egyptian state that established an individual rule, which seriously violated the principle of the rule of law, as it increased the concentration of powers in the hands of the King, it made the executive authority entirely within the competence of the King, and made him competent to approve laws after approval Parliament if it does not endorse and ratify it, it is not issued.

Unlike the previous constitution, which included a mechanism to solve the problem of Parliament's approval of the law and the King's objection to it, the 1923 Constitution made the matter in the hands of Parliament if it approved the law by a two-thirds majority of its members, the law would be issued without the King's approval. The constitution made the King a god in the system of government, as he had the right to declare martial law and to appoint and dismiss officials and officers. The King had the right to select the president of the senate.

In 1934, a royal order was issued to abolish the 1930 constitution and place all powers in the hands of the king, as Parliament was dissolved. The legislative power was made in the hands of the king in addition to the executive authority until 1935, according to which the 1923 constitution was re-established. This constitution remained in effect until the establishment of the Egyptian army movement in 1952, later called the July Revolution, although the armed forces carried it out.

In December 1952, it declared the fall of the 1923 constitution and assigned the government to form a committee to draft a new constitution for approval. The people establish a representative rule, and until this is achieved, the government will exercise the various powers during the transitional period, considering the general constitutional principles.


A constitutional declaration was issued in February 1953 granting the Revolutionary Command Council the authority and competence to undertake the work of sovereignty, which was not precisely defined at that time, and entrusted the Council of Ministers with direct executive and legislative power.

This was followed by another constitutional declaration in June 1953 establishing the republican system and assuming the leadership of the army movement, Major General Muhammad Naguib, as president of the republic, abolishing the kingship system and the rule of the Muhammad Ali family and canceling the titles of members of this family.

Three years later, the Constitution of the First Republic was promulgated, which included many individual rights and freedoms and some guarantees for them. This Constitution also laid the first building block for applying the principle of separation of powers. This Constitution made the position of the President of the Republic elected for six years. He concentrated some powers in the hands of the head of state, as he had the competence and authority to dissolve parliament, appoint and dismiss ministers, and declare a state of emergency, as he had the competence to issue decisions that had the force of law.

In 1962, a constitutional declaration was issued regarding the political organization of the supreme state authorities. The organization consisted of the President of state, the Presidency Council, and the Executive Council. The mentioned tripartite authorities' formations together constitute the executive authority of the state. After that, the constitution of the United Arab Republic was issued in 1964, which established the union between Egypt and Syria, and it did not differ in its inclusion of rights and freedoms, as well as the separation of powers from the previous constitution, all that was in the matter was that it included the union between the two states.

In 1971, the Egyptian constitution was promulgated, which continued for 40 years, and included a significant development in the field of rights and freedoms, especially those related to personal liberty and the inadmissibility of arresting individuals except by judicial order, and that was for the first time in Egyptian constitutional history. The constitution also included for the first time that the sovereignty of Law is the basis of governance in the state and that the state is subject to the Law. It had many manifestations of separation of powers and the non-interference of one authority in the work of the other, except in some cases, as the President of the Republic had the power to appoint and dismiss ministers and dissolve Parliament but after a people's referendum. The people's referendum is a significant development, concerning the dissolution of Parliament. Moreover, the Parliament had the power to impeach ministers and dismiss the entire government.



In 2005, the constitution was amended concerning the method of electing the President of the Republic, as he was previously selected by referendum, through the selection and approval of Parliament and then the people's referendum on this choice and according to this amendment, the election became by direct secret ballot by the people.

After the revolution of January 25, 2011, the first constitution of the Second Republic was issued in November 2012, which included many rights and freedoms and guarantees capable of upholding the principle of the rule of law, preserving personal liberty, freedom of expression, and opinion, freedom of the press, freedom of speech, and not storming or searching homes. The independence of the judiciary was stipulated, and the constitution included many of the mighty powers of Parliament, including the withdrawal of confidence from the Prime Minister, one of his deputies, the ministers, or the entire government. The President of the Republic has restricted the dissolution of Parliament by the necessity of the people's approval first through a referendum. On the other hand, for the first time in Egyptian constitutions, the presidential period is four years, and re-election is not permitted except once. He also restricted the President of the Republic concerning choosing ministers and forming the government to the necessity of obtaining the confidence of Parliament. He added the right of the President of the Republic to declare a state of emergency, but after consulting the government and the approval of the House of Representatives. For the first time, an organized mechanism was stipulated to prosecute the President of the Republic and suspend him from his position.

After the revolution of June 30, 2013, a new constitutional document was issued that included the same previous rights, freedoms, and guarantees. Still, the difference relates to the powers of the President of the Republic and the powers of the House of Representatives. The President of the Republic may not dissolve Parliament except by a reasoned decision after first obtaining the people's approval in a referendum. Concerning occupying the presidency, the previous situation continued for four years, and he may not be re-elected only once. Also, this constitution included a provision related to the government's dismissal. It required the approval of Parliament, which is also the same condition that must be met for a cabinet reshuffle. The President of the Republic has the right to declare a state of emergency after consulting the government and obtaining the approval of the House of Representatives. The provision for the trial of the President of the Republic in the previous constitution continued as it was in the 2013 constitution.

In 2019, a constitutional amendment extended the presidential term to six instead of four years. This was also applied to the current president, contrary to general rules, as he was elected from 2014 to 2018, then re-elected from 2018 to 2022. According to the amendment, the last term was extended to 2024, provided that these periods are not counted and that his candidacy in 2026 is considered a candidacy for the first time.

Furthermore, it was stated in the 2014 constitution that it is not permissible to amend the articles of the constitution related to the presidential term. Still, according to the constitutional amendment in 2019, this article was firstly abolished, and secondly, the article related to the presidential time was amended. Does this mean that the constitution is not respected, and an amendment is made to it? Or is the will of the people the main determinant in amending the articles of the constitution that are prohibited from being amended, but rather amending the text that prohibits amendment, which raises the question about the constitutionality of constitutional amendments that contradict the foundations on which the revolution of January 25, 2011, and June 30, 2013, was based?

In the modern world, everyone supports the idea of the rule of law to give legitimacy to governments, as governments are seen as good if they apply the principle of the rule of law and thus become worthy of respect. According to Brian, the rule of law is defined by three aspects: "Government Limited by Law, Formal Legality, and The Rule of Law, not Man"¹.

Furthermore, according to David, Hobbes's account of the law ties law to the legitimacy of law to the legal constraints of the rule of law imposed on institutions for the government to operate by the rule of law². So, the ruler must be monitored through a body specialized in that by the provisions of the constitution to enable citizens to monitor the acts of the state and the president's dismissal when

¹ Brain Z. Tamanaha, (2012), "THE HISTORY AND ELEMENTS OF THE RULE OF LAW." Singapore Journal of Legal Studies, 232-47.

² David Dyzenhaus, "Hobbes and the Legitimacy of Law." Law and Philosophy, Sep 2001, 20 (5), 461-98.

violating the limits stipulated in the constitution and the law¹. The government must respect citizens' civil and political rights and not impose restrictions on their disposal².

Undoubtedly, the rule of law is a significant origin and fundamental of government legitimacy in the modern world³. With this in mind, some have identified the rule of law as the need for declared and specific rules that respect the rights of individuals and equal treatment between all of them, even if rulers⁴.

So, the law must be the king, and the king must not be the law⁵. Moreover, the ancient Greek societies decided that a long time ago, as Aristotle states: "Rightly constituted laws should be the final sovereign; and personal rule, whether it be exercised by a single person or a body of persons, should be sovereign only in those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies, to make an exact pronouncement"⁶.

Thence, this article will present the improvement of the rule of law in the Egyptian constitutions through the analysis of the element of the rule of law and some principles of democracy, such as the separation of powers and their reflection in the Egyptian constitutions from 1923 till now. Before that, the rule of law should be defined.

2. The Concept of Rule of Law

The principle of the rule of law or the rule of law expresses the principle of legality⁷, which in turn describes two meanings, one broad and the other narrow. The broad meaning of the principle of legitimacy is that the rulers and the ruled are subject to the rule of law, as all the actions of the public authorities in the state and its citizens must be consistent with the provisions of the law. As for the narrow meaning of the principle of legality, all public bodies and authorities in the state are subject to the law and comply with its provisions in the exercise of their various functions and activities.

Accordingly, the principle of legality means the need for all to respect the law. According to Albert Venn Dicey, a professor of Constitutional law at the University of Oxford, the rule of law was used in his book *Introduction to the Study of Constitutional Law*, published in 1885. But there are those who went to the fact that although Dicey was the first to coin the term "the rule of law," he was not the innovator of this idea; it was found that it dates to Aristotle, who referred to the "rule of law" according to the latest English translations⁸. And this is even though the literal translation of the sentence says, "It is better for the law to rule than for one of the citizens to rule"⁹, but the passage continues, "so that even the rulers of the laws may be subject to the law"¹⁰.

Dicey defines three elements of the rule of law as he states in the first place that no one may be punished or harmed physically or financially except for a specific violation of the law that is proved in the ordinary legal manner before the ordinary courts of the country¹¹.

Dicey clarified another meaning of the term the rule of law in his expression that "we mean, again, when we speak of the rule of law as a characteristic of our country, that it is not only the fact that no one here is above the law, but that everyone here whatever his position is subject to the law of the

¹ Barry R. Weingast, "The Political Foundations of Democracy and the Rule of Law." *American Political Science Review*, June 1997, 91 (2), 251.

² *Ibid*, 253.

³ See Brian Z. Tamanaha, (2004), "The Primacy of Society and the Failures of Law and Development", *Cornell Int'l.L.J.*, 44, 209.

⁴ Richard H. Fallon, "The Rule of Law as a Concept in Constitutional Discourse." *Columbia Law Review*, January 1997, 97 (1), 3.

⁵ Thomas Paine, *Common Sense*, in Nelson F. Adkins, ed, *Common Sense and Other Political Writings* 3, 32 (Liberal Arts, 1953).

John Locke, in: Peter Laslett (Editor), (1988), "Two Treatises of Government", Cambridge: Cambridge University Press, 400

⁶ Ernest Barker, transl, *The Politics of Aristotle*, book III, ch xi?, 19 at 127 (Oxford, 1946).

⁷ Aboelazm, K.S., (2023) 'The Role of Judicial Review on the Acts of Sovereignty in Egypt', *Central European Management Journal*, Vol. 31, No. 1, pp. 485-495.

⁸ Brian Z. Tamanaha, (2004) "On the Rule of Law: History, Politics, Theory", Cambridge: Cambridge University Press, 8-9

⁹ Aristotle, (1959), "Aristotle's Politics and Athenian Constitution", in: John Warrington (Editor and Translator), London: J. M. Dent, 97.

¹⁰ John W. F. Allison, (2007), "The English Historical Constitution", Cambridge: Cambridge University Press, 2007, 130-57.

¹¹ See Albert Venn Dicey, (1915) "Introduction to the Study of the Law of the Constitution", London: Macmillan, 110: "First, this individual should not be punished for violating a rule that any of the ministers or officials improvised to catch him, as the punishment must be a penalty for violating an existing law in the country. This violation or breach of the law must also have been proven before the ordinary judiciary in the country, "ordinary courts", and not before special courts or councils - which the government selects according to what it likes - that lack in their composition the independence and integrity that are available or expected to be found among judges in ordinary courts".

country and is allowed to knock on the doors of the ordinary courts of general jurisdiction. Thus, it becomes clear that no one is above the law, for the law transcends, and no one transcends it, for everyone is subject to the same law that takes its application and takes its course through the ordinary courts¹. So, the same law that ordinary courts should apply to the public is the same one that uses to all of them as to others².

For the rule of law to be applied, there must be equality among all citizens³, and the government must be responsible for its actions and not be exempted from punishment. This requires that its powers be limited and subject to the oversight of Parliament, which requires the existence of the principle of separation of powers and the non-concentration of authorities in the hands of the ruler or the government.

On the other hand, we must accept that there is a difference in the treatment of some groups, and this does not mean that the principle of equality before the law is not applied; these differences are due to the dissimilarity in their positions in some important respects, such as children, people with special abilities, and others⁴.

So, according to Brian, "the rule of law means that government officials and citizens are bound by and abide by the law the laws must be applied equally to every one according to terms. There must be mechanisms or institutions that enforce the legal rules they are breached"⁵.

3. Government Limited

The imposition of legal restrictions on the sovereign raises an essential dilemma since the sovereign creates the law, so how can he submit to it? In this regard, Justinian says in his blog, "What makes the prince pleased is his strength"⁶. Another code mentioned: "The prince is not bound by the laws"⁷. But he also decided in the same blog, "It is a statement worthy of the majesty for the prince to profess himself bound by the laws"⁸.

Nonetheless, the king was not subject to the law, he was bound by the general rules of law, as the king has the legislative power and, accordingly, to amend legislation, and each such amendment must be justified⁹. The historical reality proved that rulers were often subject to the constraints of the law for reasons such as to make their actions seem legitimate¹⁰.

3.1. Kingship Era

In contemporary societies, generally, and Egypt, the ruler has become subject to the law¹¹, and there are specific and clear constitutional rules for his accountability, whether in the government or the state president. This took nearly a hundred years in Egypt. This is as follows:

According to the constitution 1923 and 1930, The king, the house of representative, and the house of the senate have the legislative authority¹². Still, the law cannot be established before the king's approval¹³.

¹ Ibid, 113-14.

² Thomas Fuller, (1732), "Gnomologia: Adagies and Proverbs; Wise Sentences and Witty Sayings, Ancient and Modern, Foreign and British", London: printed for B. Barker; and A. Bettesworth and C. Hitch, 35

³ Tom Bingham, (2011), "The Rule of Law", London: Penguin UK, Reprint Edition, 11-12

⁴ Ibid, 61

⁵ Brain Z. Tamanaha, (2012), Ibid, 233.

⁶ Digest 1.4.1, cited in Peter Stein, Roman Law in European History (Cambridge: Cambridge University Press, 1999) at 59.

⁷ Digest 1.3.1, Ibid.

⁸ "The prince is Not Bound by the Laws." Accursius and the Origins of the Modern State" Comparative Studies in Society and History 378 at 392.

⁹ Jill Harries, Law and Empire in Late Antiquity (Cambridge: Cambridge University Press, 1999) at 21.

¹⁰ See Stephen Holmes, "Lineages of the Rule of Law" in Jose Maria Maravall & Adam Przeworski, Democracy and the Rule of Law (New York: Cambridge University Press, 2003) 19 at 19-61.

¹¹ Albert Venn Dicey, Introduction to the Study of the Law of the Constitution (Indianapolis: Liberty Fund Inc., 1982) at 110-115.

¹² Article 24 from the Egyptian Constitution 1923 & Constitution 1930.

¹³ Article 25 from the Egyptian Constitution 1923 & Constitution 1930.

The king's personality is inviolable¹, and the king used to exercise many functions and powers, such as issuing laws², rejecting laws³, objecting to them⁴, issuing executive regulations for laws⁵, dissolving the House of Representatives⁶, parliament postponing sessions⁷, appointing and dismissing officials⁸, declaration of martial law⁹, published decree Laws¹⁰, and minister appoints diplomats and dismisses them¹¹.

According to the 1923 constitution, the king has sovereignty and is above the laws, as all powers are concentrated in his hand. Despite this, before assuming the throne, the king must take an oath to uphold the constitution and the law¹².

The provision in this constitution reflects the opinion mentioned before¹³. However, the prince or the king is above the law. However, this did not prevent the stipulation of the need to respect the law¹⁴. This implicitly means that the prince or king is subject to the law, even if indirectly obligating him with that by taking an oath to respect the law before exercising his constitutional powers.

In 1935 the constitution 1930 was canceled and returned to the constitution 1923¹⁵. After the July 1952 revolution, King Farouk abdicated the throne to Crown Prince Ahmed Fouad¹⁶, and the Council of Ministers assumed the king's constitutional powers¹⁷. In December 1952, the Commander-in-Chief of the Armed Forces, as head of the army movement, issued a constitutional declaration, according to which the 1923 constitution was abolished¹⁸.

3.2. First Republic Era

The legislative authority in the constitution of 1956, constitution 1958, and constitution 1964 no longer consists of the House of Representatives and the Senate; only one chamber has the legislative power, called the Nation Assembly¹⁹.

In addition to the legislative authority of parliament, the parliament had, for the first time, the ability to monitor the executive authority's actions in constitution 1956 and continue in constitutions 1958 and 1964,²⁰ and hold them accountable by directing questions, interrogations to government members²¹, withdrawal of confidence from any minister²². Members of the Nation Assembly also enjoyed parliamentary immunity for the duration of their election²³, which is five years²⁴.

¹ Article 33 from the Egyptian Constitution 1923 & Constitution 1930.

² Article 34 from the Egyptian Constitution 1923 & Constitution 1930.

³ Article 35 from the Egyptian Constitution 1923 & Constitution 1930.

⁴ Article 36 from the Egyptian Constitution 1923 & Constitution 1930.

⁵ Article 37 from the Egyptian Constitution 1923 & Constitution 1930.

⁶ Article 38 from the Egyptian Constitution 1923 & Constitution 1930.

⁷ Article 39 from the Egyptian Constitution 1923 & Constitution 1930.

⁸ Article 44 from the Egyptian Constitution 1923 & Constitution 1930.

⁹ Article 45 from the Egyptian Constitution 1923 & Constitution 1930.

¹⁰ Article 41 from the Egyptian Constitution 1923 & Constitution 1930.

¹¹ Article 49 from the Egyptian Constitution 1923 & Constitution 1930.

¹² Article 50 from the Egyptian Constitution 1923 and 1930: *"Before the King exercises his constitutional powers, he shall take the following oath before the assembly of both chambers: I swear by Almighty God to respect the Constitution and the Egyptian nation's laws and preserve the homeland's independence, unity, and territorial integrity"*.

¹³ Jill Harries, *Ibid*, 21.

¹⁴ See Stephen Holmes, *Ibid*, 19-61.

¹⁵ Kingly Decree No. 118 of 1935, issued on December 12, 1953, The Official Gazette, Issue 112, December 13, 1953.

¹⁶ Kingly Decree No. 65 of 1952, issued on July 26, 1952.

¹⁷ Statement of the Prime Minister of 26 July 1952.

¹⁸ Constitutional declaration, The Official Gazette, Issue 158 bis (non-regular) on December 10, 1952.

¹⁹ Article 65 from the Egyptian Constitution 1956. Article 13 from the Egyptian Constitution 1958. Article 47 from the Egyptian Constitution 1964.

²⁰ Articles 107 & 108 from the Egyptian Constitution 1956. Article 45 from the Egyptian Constitution 1958. Article 48 from the Egyptian Constitution 1964.

²¹ Article 90 from the Egyptian Constitution 1956. Article 24 from the Egyptian Constitution 1958. Article 86 from the Egyptian Constitution 1964.

²² Article 113 from the Egyptian Constitution 1956. Article 39 from the Egyptian Constitution 1958. Article 84 from the Egyptian Constitution 1964.

²³ Article 66 from the Egyptian Constitution 1956. Article 36 from the Egyptian Constitution 1958. Article 93 from the Egyptian Constitution 1964.

²⁴ Article 69 from the Egyptian Constitution 1956. Article 51 from the Egyptian Constitution 1964. Article 51 from the Egyptian Constitution 1964.

The President of the Republic is the President of the state¹ and the executive authority². He occupies this presidency by election from the National Assembly and then a referendum³ by the people for six years⁴. The President of the Republic has many powers, such as: participating in setting public policies with ministers⁵, proposing laws, issuing them, and objecting to them⁶, issuing decrees by-laws after a delegation from The Nation Assembly⁷, establishing public entity⁸, issuing executive regulations for laws⁹, appointing and dismissing civil servants, military personnel and diplomats¹⁰, declaring a state of emergency¹¹, appointing and dismissing ministers¹².

The President takes an oath to respect the law before the Nation Assembly before doing his authority¹³. On the other hand, the president also has the right to dissolve the Nation Assembly¹⁴ in the 1958 constitution and establish decree laws¹⁵.

The president did not have the authority to dissolve the Nation Assembly. For the first time in Egyptian constitutional history, constitutional provisions governing the trial of the republic's president were introduced. Although this reflected the development of the rule of law, the trial was limited to the crime of high treason or disloyalty to the republican system. The trial shall be before a special court formed in accordance with the law¹⁶. This law was not issued until the abolition of this constitution.

In 1971, Egypt had a new constitution called the sustainable constitution. In this constitution, the legislative authority consisted of the House of People¹⁷ till the constitutional amendment in 1980 that established another council named Shoura Council¹⁸.

The House of People can monitor the executive authority's actions¹⁹ and hold them accountable by directing questions²⁰ and interrogations to government members²¹ and withdrawing confidence from any minister²². Members of the House of People also enjoyed parliamentary immunity for the duration of their election²³, which is five years²⁴.

The President of the Republic is the President of the state²⁵ and the executive authority²⁶. He occupies this presidency by election from the House of People and then a referendum²⁷ by the people for six years²⁸. The President of the Republic has many powers, such as: participating in setting public

¹ Article 64 from the Egyptian Constitution 1956. Article 12 from the Egyptian Constitution 1958. Article 46 from the Egyptian Constitution 1964.

² Article 119 from the Egyptian Constitution 1956. Article 44 from the Egyptian Constitution 1958.

³ Article 121 from the Egyptian Constitution 1956. Article 102 from the Egyptian Constitution 1964.

⁴ Article 122 from the Egyptian Constitution 1956. Article 103 from the Egyptian Constitution 1964.

⁵ Article 131 from the Egyptian Constitution 1956. Article 113 from the Egyptian Constitution 1964.

⁶ Article 132 from the Egyptian Constitution 1956. Article 50 from the Egyptian Constitution 1958. Article 114 from the Egyptian Constitution 1964.

⁷ Article 136 from the Egyptian Constitution 1956. Article 120 from the Egyptian Constitution 1964.

⁸ Article 137 from the Egyptian Constitution 1956. Article 54 from the Egyptian Constitution 1958. Article 121 from the Egyptian Constitution 1964.

⁹ Article 138 from the Egyptian Constitution 1956. Article 122 from the Egyptian Constitution 1964.

¹⁰ Article 140 from the Egyptian Constitution 1956. Article 128 from the Egyptian Constitution 1964.

¹¹ Article 144 from the Egyptian Constitution 1956. Article 57 from the Egyptian Constitution 1958. Article 126 from the Egyptian Constitution 1964.

¹² Article 146 from the Egyptian Constitution 1956. Article 47 from the Egyptian Constitution 1958. Article 114 from the Egyptian Constitution 1964.

¹³ Article 123 from the Egyptian Constitution 1956; Article 90 from the Egyptian Constitution 1958; Article 107 from the Egyptian Constitution 1964: *"Before the President does his authority, he shall take the following oath before the Nation assembly: I swear by Almighty God to save the republic system, respect the Constitution and laws, and to take full care of the people's interests, and to preserve the country's independence, unity, and territorial integrity"*.

¹⁴ Article 38 from the Egyptian Constitution 1958. Article 91 from the Egyptian Constitution 1964.

¹⁵ Article 53 from the Egyptian Constitution 1958. Article 119 from the Egyptian Constitution 1964.

¹⁶ Article 130 from the Egyptian Constitution 1956. Article 112 from the Egyptian Constitution 1964.

¹⁷ Article 86 from the Egyptian Constitution 1971.

¹⁸ Article 2 from the Constitutional amendment in 1980.

¹⁹ Article 86 from the Egyptian Constitution 1971.

²⁰ Article 124 from the Egyptian Constitution 1971.

²¹ Article 125 from the Egyptian Constitution 1971.

²² Article 126 from the Egyptian Constitution 1971.

²³ Article 98 from the Egyptian Constitution 1971.

²⁴ Article 92 from the Egyptian Constitution 1971.

²⁵ Article 73 from the Egyptian Constitution 1971.

²⁶ Article 137 from the Egyptian Constitution 1971.

²⁷ Article 76 from the Egyptian Constitution 1971.

²⁸ Article 77 from the Egyptian Constitution 1971.

policies with ministers¹, proposing laws, issuing them, and objecting to them², issuing decrees by-laws after a delegation from The House of People³, establishing public entity⁴, issuing executive regulations for laws⁵, appointing and dismissing civil servants, military personnel, and diplomats⁶, declaring a state of emergency⁷.

The President takes an oath to respect the law before the House of People before doing his authority⁸. On the other hand, the president also has the right to dissolve the House of People⁹, also has the authority to establish decree laws¹⁰.

The president can be subjected to a trial limited to the crime of high treason or disloyalty to the republican system. The prosecution shall be before a special court formed by the law. This law was not issued until the abolition of this constitution¹¹.

The previous constitution has been canceled after the January revolution in 2011, and the people want to write a new constitution that already wrote after one year and has been canceled one year after, because of the revolution on 30 June 2013, after that Egypt established a new constitution that has some differences from all previous constitution, like the period of the presidency, the president trial, the authority to established the laws, as follow;

3.3. Second and Third Republic Era

The previous constitution was canceled after the January revolution in 2011, and the people want to write a new constitution that already wrote after one year and has been canceled one year after because of the revolution on 30 June 2013, after that Egypt established a new constitution that has some differences from all previous constitution, like the period of the presidency, the president trial, the authority to established the laws, as follows;

The presidency period is only four years and can be renewable for another period only, and the people should elect the president directly¹². The president should take the approval of the House of Representatives when he appoints or dismiss ministers¹³.

Moreover, the president has no authority to establish law decrees. On the other hand, the constitution organizes how to trial the president in specific procedures¹⁴. And for the first time the Egyptian constitutional history, the House of Representatives can withdraw confidence from the President¹⁵.

After five years of issuing the new constitution, the presidential period was changed, although the 2014 constitution is not permissible to amend the articles of the constitution related to the presidential period.

Accordingly, an important issue can be raised, would this amendment weaken the rule of law if it became unconstitutional?

¹ Article 138 from the Egyptian Constitution 1971.

² Article 141 from the Egyptian Constitution 1971.

³ Article 108 from the Egyptian Constitution 1971.

⁴ Article 146 from the Egyptian Constitution 1971.

⁵ Article 144 from the Egyptian Constitution 1971.

⁶ Article 143 from the Egyptian Constitution 1971.

⁷ Article 148 from the Egyptian Constitution 1971.

⁸ Article 79 from the Egyptian Constitution 1971: "Before the President does his authority, he shall take the following oath before the Nation assembly: I swear by Almighty God to save the republic system, respect the Constitution and laws, and to take full care of the people's interests, and to preserve the country's independence, unity, and territorial integrity".

⁹ Article 136 from the Egyptian Constitution 1971.

¹⁰ Article 147 from the Egyptian Constitution 1971.

¹¹ Article 85 from the Egyptian Constitution 1971.

¹² Article 140 from the Egyptian Constitution 2014.

¹³ Articles 146 and 147 from the Egyptian Constitution 2014.

¹⁴ Article 159 from the Egyptian Constitution 2014

¹⁵ Article 161 from the Egyptian Constitution 2014.

4. Unconstitutional Constitutional Amendments

Constitutional changes are important, but they must take place within the framework of the procedures specified by the constitution and not violate them¹. The amendments must be legitimate, meaning they do not affect the basic principles on which the constitution is based. Also, if the constitution prohibits amendment, then the amendments become illegal². Some constitutional courts in some countries have annulled constitutional amendments that contradict some provisions of the existing constitution because these amendments affect the essence of the constitution³.

The idea of protecting some ideas through non-modifiable provisions has had great success. As some have reviewed 192 written constitutions, through which they concluded that they created a constitution that included some non-amendable provisions⁴.

The constitution of 2014 in article 226 stipulates that “it is not permissible to amend articles related to the re-election of the President of the Republic, or the principles of freedom or equality unless the amendment is related to more guarantees.”

According to this article, it is not possible to make some amendments related to the re-election of the president unless these amendments will present more guarantees. However, the constitutional amendments in 2019 changed this article by increasing the presidential period to six years instead of four; moreover, the amendments applied the new changes to the current president, as follows:

¹ See, Smend, Rudolf, ‘Constitution and Constitutional Law’, Weimar - A Jurisprudence of Crisis (Arthur J. Jacobson and Bernhard Schlink eds., University of California Press, 2002, p. 248.

Schwartzberg, Melissa, *Democracy and Legal Change* (Cambridge University Press, 2009, p. 5.

Willoughby, William Franklin, *An Introduction to the Study of the Government of Modern States*, The Century Co., 1921, p.128. Lutz, Donald S., ‘Toward a Theory of Constitutional Amendment’, 88(2) *Amer. Pol. Sci. Rev.* (1994), p. 356.

² See, Arné, Serge, ‘Existe-t-il des Normes Supra-Constitutionnelles’, 2 *Revue du Droit Public* (1993), p. 461.

Barak, Aharon, ‘A Judge on Judging: The Role of a Supreme Court in a Democracy’, 116 *Harv. L. Rev.* (2002-2003), p. 89.

Chatterjee, Arun Prokas, ‘Constitutional Changes: Problems and Prospects’, 5(4) *Social Scientist* (1976), p. 70.

Favoreu, Louis, ‘Souveraineté et supraconstitutionnalité’, 67 *Pouvoirs* (1993), pp. 74-76.

Kremnitzer, Mordechai, ‘Disqualification of Lists and Parties: The Israeli Case’, *Militant Democracy* (András Sajó ed., Eleven International Publishing, 2004), p. 157.

Macklem, P., ‘Militant Democracy, Legal Pluralism, and the Paradox of Self-Determination’, 4(3) *Int’l. J. Const. L.* (2006), p. 488.

Mersel, Y., ‘The Dissolution of Political Parties: The Problem of Internal Democracy’, 4(1) *Int’l. J. Const. L.* (2006), p.84.

Murphy, Walter F., ‘Excluding Political Parties: Problems for Democratic and Constitutional Theory’, *Germany and its Basic Law* (Nomos Verlagsgesellschaft, 1993), p. 173.

Navot, S., ‘Fighting Terrorism in the Political Arena the Banning of Political Parties’ 14(6) *Party Politics* (2008), p. 91.

Roznai, Yaniv ‘The Theory and Practice of “Supra-Constitutional” Limits on Constitutional Amendments’, 62(3) *Int’l & Comp. L. Q.* (2013), p. 557.

Samar, Vincent J., ‘Can a Constitutional Amendment Be Unconstitutional?’, 33 *Okla City U. L. Rev.* (2008), p. 667.

Schnably, Stephen J., ‘Emerging International Law Constraints on Constitutional Structure and Revision: A Preliminary Appraisal’, 62 *U. Miami L. Rev.* (2007-2008), p. 417.

Vedel, Georges, ‘Souveraineté et supra-constitutionnalité’ 67 *Pouvoirs*, p. 76 .

Valdés, Jorge Tapia, ‘Poder constituyente irregular: los límites metajurídicos del powder constituyente originario’, 6(2) *Estudios Constitucionales* (2008), p. 121.

³ See, generally, Yaniv Roznai and Serkan Yolcu, “An unconstitutional constitutional amendment—The Turkish perspective: A comment on the Turkish Constitutional Court’s headscarf decision”, *International Journal of Constitutional Law*, Volume 10, Issue 1, January 2012, Pages 175-207, <https://doi.org/10.1093/icon/mos007>.

Seyla Benhabib, Turkey’s Constitutional Zigzags, *DISSENT* 25 (2009); Ayla Göl, The Identity of Turkey: Muslim and Secular, 30 *THIRD WORLD Q.* 795.

ELISABETH ÖZDALGA, THE VEILING ISSUE, OFFICIAL SECULARISM AND POPULAR ISLAM IN MODERN TURKEY (1998). As Navaro-Yashin notes, the headscarf, which was interpreted by Islamists as a representation of Islamic chastity, has gained its own meaning, not only as a reference to female beliefs but to “politics of identity in relation to secularists and the secularist state”.

Yael Navaro-Yashin, *FACES OF THE STATE: SECULARISM AND PUBLIC LIFE IN TURKEY* 110 (2002).

⁴ See, Yaniv Roznai, Unconstitutional Constitutional Amendments—The Migration and Success of a Constitutional Idea, *The American Society of Comparative Law*, Vo. 61, 2013, p. 667.

This result seems to support Hourquebie’s assertion that nearly forty percent of the constitutions of 170 states include explicit limitations on the constitutional amendment power. See Fabrice Hourquebie, *Pouvoir Constituant Derive et Controle du Respect des Limites*, *PAPER PRESENTED AT THE VII WORLD CONGRESS OF THE INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW* 3 (June 13, 2007), <http://droitconstitutionnel.org/athenes/hourquebie.pdf>.

Benjamin Akzin, The Place of the Constitution in the Modern State, 2(1) *ISR. L. REV.* 1 (1967).

Article 140 (amended) “The President of the Republic is elected for six years, starting from the day following the end of his predecessor’s term. He may not hold the presidency for more than two consecutive terms. The President of the Republic may not have any partisan position throughout the presidency.”

Article 241 bis (added) “The term of the current President of the Republic ends with an expiration of six years from announcing his election as President of the Republic in 2018, and he may be re-elected for the next time.”

These amendments are unconstitutional from two sides; the first is extending the presidential period to six years instead of four years. The second one is applying this amendment to the current president; although the people elect him for four years, which is supposed to end in 2022, according to this amendment, it will end in 2024, and he will be re-elected for two periods.

These amendments contradict the principle of legality and the rule of law entirely because these two principles suppose to respect the constitution, but what happened is the opposite.

After more than 100 years of constitutional life and improvement of the rule of law and principle of legality, the last amendments demolish these improvements, which will lead to the point of start that can also lead to a new revolution to save the two revolutions 25th January 2011 and 30th June 2013.


CONCLUSION

The Egyptian constitutions have significantly developed since the beginning of the constitutional life in 1923, which showed the reduction of the powers and powers of the ruler, whether the king or the president, and many rights and freedoms have developed with the development of these constitutions, in addition to the guarantees of these rights and freedoms.

The 2014 constitution is considered one of the most developed and expressive of the rule of law and reduced the president's powers, limiting his presidential term to a maximum of two terms of four years each. This is until the constitutional amendments took place, which significantly detracted from the rule of law by violating some constitutional provisions that are not subject to amendment and amending presidential terms.

REFERENCES

- [1] Aboelazm, K.S., (2021) ‘The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries’, *Int. J. Public Law and Policy*, Vol. 7, No. 3, pp. 187-203.
- [2] Aboelazm, K.S., (2023) ‘The Role of Judicial Review on the Acts of Sovereignty in Egypt’, *Central European Management Journal*, Vol. 31, No. 1, pp. 485-495.
- [3] Albert Venn Dicey, (1915) “Introduction to the Study of the Law of the Constitution”, London: Macmillan.
- [4] Albert Venn Dicey (1982), *Introduction to the Study of the Law of the Constitution*, Indianapolis: Liberty Fund Inc.
- [5] Aristotle, (1959), “Aristotle’s Politics and Athenian Constitution”, In: John Warrington (Editor and Translator), London: J. M. Dent.
- [6] Arné, Serge, (1993), ‘Existe-t-il des Normes Supra-Constitutionnelles’, 2 *Revue du Droit Public*.
- [7] Barak, Aharon, (2002-2003), ‘A Judge on Judging: The Role of a Supreme Court in a Democracy’, 116 *Harv. L. Rev.*
- [8] Barry R. Weingast, (1997), “The Political Foundations of Democracy and the Rule of Law.” *American Political Science Review*, 91 (2).
- [9] Brian Z. Tamanaha, (2004), “The Primacy of Society and the Failures of Law and Development”, *Cornell Int’l.L.J.*, 44.
- [10] Brian Z. Tamanaha, (2004) “On the Rule of Law: History, Politics, Theory”, Cambridge: Cambridge University Press.
- [11] Brian Z. Tamanaha, (2012), “THE HISTORY AND ELEMENTS OF THE RULE OF LAW.” *Singapore Journal of Legal Studies*.
- [12] Benjamin Akzin, (1967), *The Place of the Constitution in the Modern State*, 2(1) *ISR. L. REV.* 1.
- [13] Chatterjee, Arun Prokas, (1976), ‘Constitutional Changes: Problems and Prospects’, 5(4) *Social Scientist*
- [14] David Dyzenhaus, (2001), “Hobbes and the Legitimacy of Law.” *Law and Philosophy*, 20 (5).
- [15] ELISABETH ÖZDALGA, (1998), *THE VEILING ISSUE, OFFICIAL SECULARISM AND POPULAR ISLAM IN MODERN TURKEY*.

- 
- [16] Ernest Barker, (1946), transl, *The Politics of Aristotle*, book III, ch xi?, (Oxford).
 - [17] Fabrice Hourquebie, (2007), *Pouvoir Constituant Derive et Controle du Respect des Limites*, PAPER PRESENTED AT THE VII WORLD CONGRESS OF THE INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW 3.
 - [18] Favoreu, Louis, (1993), 'Souveraineté et supraconstitutionnalité', 67 *Pouvoirs*.
 - [19] Jill Harries (1999), *Law and Empire in Late Antiquity*, Cambridge: Cambridge University Press.
 - [20] John Locke, In: Peter Laslett (Editor), (1988), "Two Treatises of Government", Cambridge: Cambridge University Press.
 - [21] John W. F. Allison, (2007), "The English Historical Constitution", Cambridge: Cambridge University Press, 2007.
 - [22] Kremnitzer, Mordechai, (2004), 'Disqualification of Lists and Parties: The Israeli Case', *Militant Democracy*, András Sajó ed., Eleven International Publishing.
 - [23] Lutz, Donald S., (1994) 'Toward a Theory of Constitutional Amendment', 88(2) *Amer. Pol. Sci. Rev.*
 - [24] Macklem, P, (2006), 'Militant Democracy, Legal Pluralism, and the Paradox of Self-Determination', 4 (3) *Int'l. J. Const. L.*
 - [25] Mersel, Y, (2006), 'The Dissolution of Political Parties: The Problem of Internal Democracy', 4(1) *Int'l. J. Const. L.*
 - [26] Murphy, Walter F., (1993), 'Excluding Political Parties: Problems for Democratic and Constitutional Theory', *Germany and its Basic Law*, Nomos Verlagsgesellschaft.
 - [27] Navot, S, (2008), 'Fighting Terrorism in the Political Arena the Banning of Political Parties' 14(6) *Party Politics*.
 - [28] Peter Stein (1999), *Roman Law in European History*, Cambridge: Cambridge University Press.
 - [29] Richard H. Fallon, (1997), "The Rule of Law as a Concept in Constitutional Discourse." *Columbia Law Review*, 97 (1).
 - [30] Roznai, Yaniv (2013), 'The Theory and Practice of "Supra-Constitutional" Limits on Constitutional Amendments', 62(3) *Int'l & Comp. L. Q.*
 - [31] Samar, Vincent J., (2008), 'Can a Constitutional Amendment Be Unconstitutional?', 33 *Okla City U. L. Rev.*
 - [32] Seyla Benhabib, *Turkey's Constitutional Zigzags*, *DISSENT* 25 (2009); Ayla Göl, *The Identity of Turkey: Muslim and Secular*, 30 *THIRD WORLD Q.* 795.
 - [33] Schnably, Stephen J., (2007-2008), 'Emerging International Law Constraints on Constitutional Structure and Revision: A Preliminary Appraisal', 62 *U. Miami L. Rev.*
 - [34] Schwartzberg, Melissa, (2009), *Democracy and Legal Change*, Cambridge University Press.
 - [35] Smend, Rudolf, (2002), 'Constitution and Constitutional Law', Weimar - A Jurisprudence of Crisis (Arthur J. Jacobson and Bernhard Schlink eds., University of California Press.
 - [36] Stephen Holmes, (2003), "Lineages of the Rule of Law" in Jose Maria Maravall & Adam Przeworski, *Democracy and the Rule of Law*, New York: Cambridge University Press.
 - [37] Thomas Paine, *Common Sense* (1953), in Nelson F. Adkins, ed, *Common Sense and Other Political Writings* 3, 32 (*Liberal Arts*).
 - [38] Thomas Fuller, (1732), "Gnomologia: Adagies and Proverbs; Wise Sentences and Witty Sayings, Ancient and Modern, Foreign and British", London: printed for B. Barker; and A. Bettesworth and C. Hitch.
 - [39] Tom Bingham, (2011), "The Rule of Law", London: Penguin UK, Reprint Edition.
 - [40] Valdés, Jorge Tapia, (2008), 'Poder constituyente irregular: los límites metajurídicos del powder constituyente originario', 6(2) *Estudios Constitucionales*.
 - [41] Vedel, Georges, 'Souveraineté et supra-constitutionnalité' 67 *Pouvoirs*.
 - [42] Willoughby, William Franklin, (1921) *An Introduction to the Study of the Government of Modern States*, The Century Co.
 - [43] Yael Navaro-Yashin, (2002), *FACES OF THE STATE: SECULARISM AND PUBLIC LIFE IN TURKEY* 110.
 - [44] Yaniv Roznai and Serkan Yolcu, (2012), "An unconstitutional constitutional amendment—The Turkish perspective: A comment on the Turkish Constitutional Court's headscarf decision", *International Journal of Constitutional Law*, Volume 10, Issue 1.
 - [45] Yaniv Roznai, (2013), *Unconstitutional Constitutional Amendments—The Migration and Success of a Constitutional Idea*, *The American Society of Comparative Law*, Vo. 61.
 - [46] *The 1923 Egyptian Constitution*.
 - [47] *The 1930 Egyptian Constitution*.
 - [48] *Kingly Decree No. 118 of 1935, issued on December 12, 1953, The Official Gazette, Issue 112, December 13, 1953.*
 - [49] *Kingly Decree No. 65 of 1952, issued on July 26, 1952.*
 - [50] *Statement of the Prime Minister of 26 July 1952.*
 - [51] *Constitutional declaration, The Official Gazette, Issue 158 bis (non-regular) on December 10, 1952.*



- [52] *The 1956 Egyptian Constitution.*
- [53] *The 1964 Egyptian Constitution.*
- [54] *The 1971 Egyptian Constitution.*
- [55] *The 1980 Egyptian Constitution Amendment.*
- [56] *The 2014 Egyptian Constitution.*
- [57] *The 2019 Egyptian Constitution Amendment.*